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THE  
JUDICATURE ACT  
OF  
NEW BRUNSWICK  
1906  
AND  
RULES OF COURT



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587	477	673	529	774	707	917	923
591	478	674	530	778	727	925	924
592	479	675	531	779	728	933	456
593	480	676	532	781	777	961	878
594	481	677	533	803	776	962	879
595	482	679	534	806	708	963	880
596	483	679 <sub>a</sub>		807	709	966	881
597	484	680	562	808	710	967	882
598	485	680 <sub>b</sub>	563	809	711	968	883
599	486	696	749	811	712	971	884
600	487	697	750	812	713	972	885
601	488	698	751	813	714	973	886
602	489	699	752	814	715	974	887
604	490	700	753	815	716	974 <sub>a</sub>	888
605	491	701	754	816	717	976	889
606	492	702	755	817	718	977	898
607	493	703	756	818	719	980	892
608	494	704	757	819	720	981	893
609	495	706	758	820	721	981 <sub>a</sub>	894
609 <sub>a</sub>	496	707	759	821	722	982	899
613	497	708	760	823	723	986	902
617	500	709	761	824	724	988	903
618	498	711	762	826	725	989	904
619	499	712	763	826	726	989 <sub>a</sub>	905
620	501	719	535	830	729	989 <sub>b</sub>	906
621	502	720	536	850	731	989 <sub>c</sub>	907
644	506	721	537	851	732	990	908
645	507	722	538	852	733	991	909
646	508	734	764	853	734	992	910
647	510	735	765	854	735	994 <sub>a</sub>	911
648	511	737 <sub>b</sub>	766	855	736	998	912
648 <sub>a</sub>	551	737 <sub>c</sub>	767	856	737	1002	915
648 <sub>b</sub>	552	737 <sub>d</sub>	768	857	738	1003	933
648 <sub>c</sub>	553	737 <sub>e</sub>	769	858	739	1012	938
648 <sub>d</sub>	554	738	770	859	740	1013	959
648 <sub>e</sub>	555	739	771	860	741	1015	940
648 <sub>f</sub>	556	740	772	861	742	1016	941
648 <sub>g</sub>	557	741	773	862	743	1017	943
648 <sub>h</sub>	558	742	774	863	744	1018	944
648 <sub>i</sub>	559	743	775	864	745	1019	945
648 <sub>k</sub>	560	756	778	865	844	1020	946
648 <sub>l</sub>	561	757	779	866	845	1026	947
656	783	762	780	868	847	1027	948
657	512	762 <sub>a</sub>	692	869	848	1028	949
657 <sub>a</sub>	513	762 <sub>b</sub>	693	870	849	1037	950
658	514	762 <sub>c</sub>	694	871	850	1038	951
659	515	762 <sub>d</sub>	695	874	852	1039	953
660	516	765	696	875	853	1040	952
661	517	766	697	878	861	1041	954
662	519	767	698	880	862	1042	955
663	520	767 <sub>a</sub>	699	882	863	1043	956
664	521	767 <sub>b</sub>	700	883	864	1044	957
665	522	768	701	900	917		

# THE JUDICATURE ACT, 1906.

## CAP. XXXVII.

OF THE ACTS OF ASSEMBLY OF NEW BRUNSWICK,  
6 EDWARD VII., A. D. 1906.

AN ACT RELATING TO THE ESTABLISHMENT OF A  
SUPREME COURT OF JUDICATURE AND TO THE  
PRACTICE AND PROCEEDINGS THEREIN.

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6 Edw. VII.  
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63. County Courts excluded from operation of Act.

6 Edw. VII.,  
c. 37.

6 Edw. VII.,  
c. 37.

*Passed 22nd March, 1906.*

Be it enacted by the Lieutenant-Governor and Legislative Assembly as follows:—

#### TITLE.

Short title.

1. This Act may be cited as "The Judicature Act, 1906."

#### INTERPRETATION.

Interpretation  
of terms.

[Cf. J. A. 1873,  
s. 100; R. S. O.  
1897, c. 51, s. 2.]

2. In this Act and in the Rules of Court in the Schedule hereto or made hereunder, unless there is something in the subject or context repugnant thereto, the several words hereinafter mentioned shall have, or include, the meanings following, that is to say:—

(1) "Court" shall mean the Supreme Court of Judicature hereby created.

(2) "Rules of Court" shall include forms.

(3) "Cause" shall include any action, suit or other original proceeding between a plaintiff and a defendant.

(4) "Suit" shall include action.

(5) "Action" shall mean a civil proceeding commenced by writ, or in such other manner as is or may be prescribed by Rules of Court, and shall not include a criminal proceeding by the Crown.

(6) "Plaintiff" shall include every person asking any relief (otherwise than by way of counter-claim as a defendant) against any other person by any form of proceeding, whether the same be taken by action, suit, petition, motion, summons or otherwise.

(7). "Petitioner" shall include every person making any application to the Court either by petition, motion or summons, otherwise than as against any defendant.

(8) "Defendant" shall include every person served with any writ of summons or process, or served with notice of, or entitled to attend any proceedings.

(9) "Party" shall include every person served with notice of, or attending any proceeding, although not named in the record.

(10) "Matter" shall include every proceeding in the Court not in a cause.



(11) "Pleading" shall include any petition or summons, <sup>6 Edw. VII., c. 37.</sup> and also shall include the statements in writing of the claim or demand of any plaintiff, and of the defence of any defendant thereto, and of the reply of the plaintiff to any counter-claim of a defendant. <sup>Interpretation of terms—Con.</sup>

(12) "Judgment" shall include decree.

(13) "Order" shall include rule.

(14) "Oath" shall include solemn affirmation and statutory declaration.

(15) "Existing" shall mean existing at the time appointed for the commencement of this Act.

(16) "Proper Officer" shall, unless and until any Rule to the contrary is made, mean an officer to be ascertained as follows:—

- (a) Where any duty to be discharged under this Act, or under Rules of Court, is a duty which has been discharged by any officer, such officer shall continue to be the proper officer to discharge the same.
- (b) Where any new duty is to be discharged, the proper officer to discharge the same shall be such officer as has previously discharged duties of a like nature, or who may, from time to time, be directed to discharge the same by the Chief Justice. *with me*

(17) "Commencement of this Act" shall mean the period at which this Act shall come into force.

#### CONSTITUTION OF COURT.

✓ 3. The Supreme Court, Circuit Courts, all Courts of Oyer and Terminer and General Gaol Delivery, and the Supreme Court in Equity, are hereby abolished, and there is hereby created one Supreme Court of Judicature for the Province, hereinafter called the Court, and to consist of two divisions—The Court of Appeal and The Trial Division. The Court shall be a Court of Record of original jurisdiction, and shall, subject to the provisions of this Act and Rules of Court, possess all such powers and authority as by the law of England are incident to a Superior Court of Civil and Criminal Jurisdiction, and shall continue to have, use and exercise the jurisdiction, rights, powers and authority which at the <sup>Abolition of existing Courts.</sup> <sup>Creation of new Court.</sup> <sup>Powers of new Court.</sup>

6 Edw. VII.,  
c. 37.

commencement of this Act were vested in, or capable of being exercised by the Supreme Court, either on the law, equity or exchequer side thereof, or otherwise howsoever.

Seal.

4. The Lieutenant-Governor in Council may, from time to time, determine and declare the Seal to be used by the said Court by which its proceedings shall be certified and authenticated, and until another Seal for the said Court is established the Seal heretofore in use for the Supreme Court may be used for all necessary purposes.

Judges of  
Court.

5.—(1) The Court shall consist of a Chief Justice and five other Judges. The Chief Justice and two other Judges to be appointed in the manner hereinafter provided shall form "The Court of Appeal," and the three remaining Judges, to be in like manner appointed, shall form "The Trial Division."

Appointment  
of Judges.

(2) The Chief Justice and the other Judges of the Court and their successors shall be appointed by the authority mentioned in *The British North America Act*. The title of the Chief Justice shall be "Chief Justice of the Supreme Court of Judicature," and the title of each of the other Judges shall be "Judge of the Supreme Court of Judicature, Court of Appeal," or "Judge of the Supreme Court of Judicature, Trial Division," as the case may be.

Title of  
Judges.

Qualification  
of Judges.

(3) The persons to be appointed Judges of the Court shall be Barristers-at-Law of at least ten years' standing at the Bar of New Brunswick.

Precedence of  
Chief Justice.

(4) The Chief Justice of the Court shall have rank and precedence over all other Judges of the Court.

Precedence of  
other Judges.

(5) The other Judges of the Court shall have rank and precedence among themselves according to seniority of appointment to their respective offices.

Judges to be  
*ex officio*  
Justices of the  
Peace, etc.

(6) The Judges of the said Court shall *ex officio* be Justices of the Peace and Coroners for every County in the Province.

Oath of  
Judges.

(7) The oath to be taken by the Judges, to be hereafter appointed, shall be the following:—

"I do solemnly and sincerely promise and swear, that I will duly and faithfully, and to the best of my skill and knowledge, execute the powers and trusts reposed in me as  
; So help me God."

The oath shall be administered to the Chief Justice and the other Judges by the Lieutenant-Governor, or such person as is appointed by the Governor-General to administer oaths of office.

6 Edw. VII.  
c. 37.

(8) The Judges of the Court shall have their residence as follows, namely: Three in the City of Saint John, one in the City of Fredericton, one in one of the Counties of Gloucester, Northumberland or Restigouche, and one in such place or county as may be directed from time to time by Order in Council of either the Lieutenant-Governor or the Governor-General. For the purposes of this sub-section and of enabling the provisions hereof to be carried out, it shall be lawful for the Governor-General or Lieutenant-Governor by Order in Council, or otherwise, from time to time to direct that three of the Judges of the Court shall reside in the City of Saint John; that one of the said Judges shall reside in the City of Fredericton; and that one of the said Judges shall reside in either the County of Gloucester, Northumberland or Restigouche; provided that nothing in this sub-section contained shall be held to apply to, or in any manner affect, the Judges of the existing Supreme Court, who may be appointed as Judges of the Court hereby created.

Residence of  
Judges.

6. Whenever by any law, statute or custom any jurisdiction, duty, power or authority, whether incident to the administration of justice or not, shall have been conferred or imposed upon the Judges of the Supreme Court, or upon any one of them, or upon the Judge in Equity, such jurisdiction, duty, power and authority shall, unless special provision be made to the contrary, be deemed to be conferred and imposed upon the Judges of the Court hereby created, and the same shall be exercised by them in as full and ample a manner as they heretofore have been by the said first named Judges of the Supreme Court, Judge in Equity, or any of them.

Jurisdiction  
heretofore  
vested in  
Judges con-  
tinued in  
Judges of new  
Court.

#### COURT OF APPEAL.

7.—(1) The Court of Appeal shall be always open for the purposes mentioned in this and the section next following; but it shall hold during each year in the City of Fredericton five sessions *en banc* to be presided over by the three Judges of the said Court for the purpose of hearing and determining all motions and applications of every kind and nature what-

Sittings of  
Court of Ap-  
peal.

6 Edw. VII.,  
c. 37.

Jurisdiction  
of Court of  
Appeal.

Commence-  
ment of sit-  
tings of Court  
of Appeal.

Hearing in  
Court of Ap-  
peal to be be-  
fore all Judges  
of the Court.

Exception.

Disability of  
Judge to hear  
appeal from  
judgment or  
order by him-  
self.

Judge of Trial  
Division sit-  
ting in Court  
of Appeal.

soever that heretofore have been or could have been heard and determined by the Supreme Court sitting *en banc*, or that are proper to be heard and determined by a Superior Court of Record *en banc*. The Court of Appeal shall have all the jurisdiction and powers possessed by the Supreme Court *en banc* at the commencement of this Act, with appellate jurisdiction in civil and criminal causes and matters, and shall have jurisdiction and power to hear and determine motions and appeals respecting any judgment, order or decision of any Judge or Judges of the Trial Division, and of any Judge of the Court of Appeal, provided that the same shall not have been made as the judgment or decision of the Court of Appeal or *en banc*. All appeals and motions from judgments, orders and decisions of any Court that heretofore lay or might have been made to the Supreme Court, shall hereafter be to the said Court of Appeal. The said Sessions shall commence on the second Tuesdays in the months of February, April, June, September and November, and shall continue for such time as is necessary to dispose of the business before the Court.

(2) Every appeal, motion or application to the Court of Appeal shall, unless otherwise provided in this Act or Rules of Court, be heard before all the Judges of the Court for the time being sitting together; provided, that any two Judges shall constitute a quorum and may lawfully hold the Court in cases where the parties consent to be heard before a Court so composed, but subject to the same right, if any, of appeal as if the hearing and determination had been before the whole Court. It shall not be necessary for all the Judges who have heard the argument in any case to be present in order to constitute the Court for delivering judgment in such case; and where any Judge, who has heard the case, is not present at the time of judgment being delivered, his judgment may be announced or read by one of the other Judges of the Court, and it shall have the same effect as if he were present.

(3) No Judge shall sit as a Judge on the hearing of an appeal from any judgment or order made by himself; and no Judge shall sit on the hearing of any motion for a new trial in any cause or matter tried with a Jury before himself.

(4) In any cause or matter in which a Judge of the Court of Appeal is unable to sit or take part, in consequence of the provisions of the preceding sub-section, or from illness or any

*Appeal* other cause, or in case of a vacancy in the Court, the Chief Justice, or in case of his illness or absence, the senior Judge of the Court of Appeal, shall summon a Judge of the Trial Division to sit and act in the place of such Judge, or in the place of any Judge whose office has become vacant; and while so sitting and acting any such Judge shall have all the jurisdiction, power and authority which such other Judge would have had.

<sup>6</sup> Edw. VII.  
c. 37.

#### EQUITY BUSINESS.

8.—(1) All motions, petitions, causes and matters as have heretofore been heard in the Supreme Court in Equity, shall be heard and determined by one of the Judges of the Court of Appeal, to be agreed upon by the Judges of said Court, and herein called the Judge in Equity. In particular, but so as not to restrict the generality of the foregoing words, such Judge shall hear and determine all actions, motions and petitions respecting the following matters, namely:

Assignment of  
Equity business to Judge  
in Equity.

Matters assigned to  
Judge in  
Equity.

(a) All causes and matters pending in equity at the commencement of this Act;

[Cf. J. A. 1873.  
s. 34].

(b) All causes and matters for any of the following purposes:

The administration of the estates of deceased persons;

The dissolution of partnerships or the taking of partnership accounts;

The redemption or foreclosure of mortgages;

The raising of portions or other charges on land;

The sale and distribution of the proceeds of property subject to any lien or charge;

The execution of trusts, charitable or private; and the appointment and discharge of trustees;

The rectification, or setting aside, or cancellation of deeds or other written instruments;

The specific performance of contracts between vendors and purchasers of real estate, including contracts for leases;

The partition or sale of real estate;

The wardship and adoption of infants and the care and sale of infants' estates;

6 Edw. VII.,  
c. 37.

The admeasurement of dower;

Lunacy, and the care and sale of estates of lunatics;

Estates of habitual drunkards.

Word  
"Equity" to  
be indorsed on  
writ.

Every writ of summons or other document by which any of the above causes or matters may be commenced shall be marked by the party issuing or taking out the same with the word "Equity," and every such cause or matter shall be thereby assigned to such Judge.

Assignment of  
cause or mat-  
ter to Judge in  
Equity by  
direction of a  
Judge.

(2) If any plaintiff or petitioner shall at any time fail to assign his cause or matter, which ought to be assigned according to the preceding sub-section to said Judge in Equity, any Judge may, on a summary application at any stage of the cause or matter, direct the same to be assigned or transferred to said Judge in Equity; or if any plaintiff or petitioner shall at any time assign a cause or matter to said Judge in Equity which should not be assigned to him, the Judge in Equity may, on a summary application at any stage of the cause or matter, direct the same to be transferred to the trial division of the Court, or he may, if he think it expedient so to do, retain the same before himself; and all steps and proceedings whatsoever taken by the plaintiff or petitioner, or by any other party in any such cause or matter, and all orders made therein by the Court or a Judge before any such transfer, shall be valid and effectual to all intents and purposes in the same manner as if the same had been taken and made in the trial division of the Court, or before the Judge in Equity, to which such cause or matter ought to have been assigned, as the case may be.

Transfer to  
trial division  
of business  
assigned to  
Judge in  
Equity.

Absence, etc.,  
of Judge in  
Equity.

(3) In case the Judge appointed to attend to the business in sub-section (1) of this section mentioned shall be absent from the Province, or through sickness, interest, or for other good reason be unable to attend to the same, all such business may be carried on and determined by one of the other Judges of the Court of Appeal to be designated by the Chief Justice. *diff*

Sittings of  
Judge in  
Equity.

(4) Stated sittings for the purposes in sub-section (1) of this section mentioned shall be held by the said Judge in Equity, or by the Judge acting in his stead under the preceding sub-section, at Fredericton, on the first Tuesday in every month in each year, excepting February, April, June, July, August,

September and November; and at the City of Saint John on the third Tuesday in every month, except February, April, July, September and November; at Dorchester, in the County of Westmorland, on the last Tuesday in May and second Tuesday in December; at Newcastle, in the County of Northumberland, on the fourth Tuesday in February; and at Andover, in the County of Victoria, on the first Tuesday in November in each year, for the purpose of hearing all motions, petitions, matters and causes as in sub-section (1) of this section mentioned. Like sittings may be held in any of the other counties in the Province as the said Judge may appoint. A notice of such appointment shall be published by the Registrar of the Court in the *Royal Gazette* once, not less than fourteen days before the holding of any such sittings, at which any business that would be heard at the ordinary sittings may be heard and disposed of. At all of the sittings in this sub-section mentioned the Registrar of the Court, or a deputy, shall attend. The Registrar shall have power to open and adjourn any of the sittings of the said Court at Fredericton, unless some cause shall have been entered for hearing thereat. When the Registrar shall open any sittings of the said Court, if it should appear to him that there is any business requiring the presence of the Judge, he shall thereupon adjourn the sittings to the next or some future day, and notify the Judge of such adjournment, so that he may attend at the opening of the said adjourned sittings.

6 Edw. VII.,  
c. 37.

Special sittings of Judge in Equity.

Attendance by Registrar or Deputy.

Adjournment of Fredericton sittings.

(5) The Registrar of the Court may transact all such business, and exercise all such jurisdiction in respect of the following proceedings and matters as may be transacted or exercised by the Court, or any Judge, that is to say:

Certain powers vested in Registrar.

- (a) Granting leave for service out of the jurisdiction of a writ, or notice of a writ of summons; perfecting service of writs of summons; and ordering substituted or other service, or the substitution of notice for service;
- (b) All matters relating to infants, excepting their custody;
- (c) Judgment by default and proceedings thereon in suits for partition, foreclosure, or foreclosure and sale, or redemption, or by consent of parties;
- (d) All matters in lunacy.



6 Edw. VII.,  
c. 37.

Powers of Registrar may be exercised in any part of the Province.

Sittings at Saint John.

Reference by Registrar to Judge.

Appeal from Registrar.

The said Registrar may exercise such jurisdiction and trans-act such business in any part of the Province, and shall hold sittings at the City of Saint John for the transaction of such business on the last Tuesday of the months of February, April, June, September and November in each year. In case any matter shall appear to the said Registrar to be proper for the decision of the Court or a Judge, the Registrar may refer the same to the said Court or Judge, who may either dispose of the matter or refer the same back to the Registrar with such directions as they or he may think fit. Every order or decision made or given by the said Registrar shall be as valid and binding on all parties concerned as if the same had been made or given by the Court or a Judge thereof. Any person affected by any order or decision of the Registrar may appeal therefrom to the Court or a Judge having jurisdiction over the matter. Such appeal shall be by motion, or notice, setting forth the grounds of objection, and served within six days after the decision complained of, and two clear days before the day fixed for hearing the same, or served within such other time as may be allowed by any Judge or the Registrar. The Registrar shall have power to administer oaths and perform such other duties in respect of any proceedings as are assigned to him under this Act or by Rules of Court.

## SITTINGS OF COURTS OF TRIAL DIVISION.

County sittings of Trial Courts.

9.—(1) At least twice a year in each county of the Province a sitting of the Court shall be held before one of the Judges of the Trial Division for the trial of all causes, both civil and criminal, and for the disposition of all business such as has heretofore been tried, disposed of and transacted by the Circuit Courts. It shall not be necessary to issue any commission for the holding of any such Courts, and all statutes and rules of procedure in any way relating to the said Circuit Courts shall be applicable to the Court herein directed to be held, unless provision be made to the contrary in this Act, or in the Rules of Court annexed hereto, or unless they are inconsistent with the same.

Special sittings of Trial Courts.

(2) Like sittings for the trial of civil causes and issues may be held in any county of the Province, as any Judge of the Trial Division, by order under his hand to the District Clerk of the County in which said sittings are to be held shall appoint, and all officers shall attend thereat as such Judge shall

in such order direct. The Judge may in said order direct a <sup>6 Edw. VII., c. 37.</sup> Jury to be summoned, and the same shall be summoned by the Sheriff in the same manner as in the case of other sittings.

(3) The sittings of the said Trial Courts shall be held in <sup>Sittings of Trial Courts for respective counties.</sup> each and every year in the several counties at the following periods, that is to say :—

In and for the County of York in January, on the first <sup>York.</sup> Tuesday, or if that day should be New Year's day then on the first Wednesday, and in June on the fourth Tuesday.

In and for the City and County of Saint John in January, <sup>Saint John.</sup> on the second Tuesday, and in March on the fourth Tuesday ; in June on the fourth Tuesday ; in September on the first Tuesday, and in November on the fourth Tuesday.

In and for the County of King's, on the second Tuesday in <sup>King's.</sup> January, and the fourth Tuesday in September.

In and for the County of Albert, on the first Tuesday in <sup>Albert.</sup> April and the first Tuesday in June.

In and for the County of Westmorland, on the fourth Tues- <sup>Westmorland.</sup> day in February, the first Tuesday in May and the first Tuesday in November.

In and for the County of Kent, on the third Tuesday in <sup>Kent.</sup> March and the first Tuesday in October.

In and for the County of Carleton, on the fourth Tuesday <sup>Carleton.</sup> in April and the third Tuesday in October.

In and for the County of Madawaska, on the second Tues- <sup>Madawaska.</sup> day in March and the second Tuesday in October.

In and for the County of Victoria, on the first Tuesday in <sup>Victoria.</sup> March and the fourth Tuesday in September.

In and for the County of Charlotte, on the second Tuesday <sup>Charlotte.</sup> in May and the fourth Tuesday in October.

In and for the County of Queen's, on the third Tuesday in <sup>Queen's.</sup> May and the first Tuesday in October.

In and for the County of Restigouche, on the fourth Tues- <sup>Restigouche.</sup> day in March and the last Tuesday in August.

6 Edw. VII.,  
c. 37.  
Gloucester.      In and for the County of Gloucester, on the first Tuesday in March and the fourth Tuesday in August.

Northumbar-  
land.      In and for the County of Northumberland, on the fourth Tuesday in May and the first Tuesday in December.

Sunbury.      In and for the County of Sunbury, on the fourth Tuesday in April and the third Tuesday in October.

Assignment of  
Judges.      (4) The Chief Justice shall, on or about the beginning of each year, assign to each Judge of the Trial Division the sittings over which he shall preside during the year, and he may also, whenever it may seem good to him by reason of the pressure of business, or any other good cause, assign one or more of the Judges of the Court of Appeal to perform the duties of a Judge of the Trial Division.

Hours of  
sittings of  
Trial Courts.      (5) The daily sittings of said Trial Courts, when engaged in the trial of civil causes, shall commence at a time not earlier than ten of the clock in the forenoon, and shall not be continued later than six of the clock in the afternoon, and a recess of at least one hour shall be taken, beginning at one of the clock in the afternoon; provided that the presiding Judge may, with the consent of the counsel on both sides, continue the hearing of any cause until any later hour in the afternoon, and that the Court may assemble at any hour to receive the verdict of a jury.

Special Trial  
Courts.      (6) Special Trial Courts may be held when necessary in any county, with the same powers, privileges, incidents, and duties in all respects as to crimes and offences as hereinbefore in this section provided, for which purpose a commission shall be issued by the Lieutenant-Governor under the Great Seal, as was heretofore the practice.

Commence-  
ment of sit-  
tings of Trial  
Courts.      (7) The several sittings shall commence at the time prescribed therefor, and continue as long as may be necessary for the despatch of business. If it should happen from any unavoidable cause that the Court should not be opened on the day appointed therefor, the same may be done on the following day, unless it be a day of public rest, then on the next succeeding day; but all proceedings shall be as of the first day, and relate thereto. All parties, witnesses, jurors, and other ministers of the law, shall attend and be bound by the

same penalties in all respects as if the Court had been opened <sup>6 Edw. VII.,  
c. 37.</sup>  
at the proper time.

(8) When it may be necessary to finish the business, the <sup>Adjournment.</sup>  
presiding Judge may adjourn any such sitting to a future day,  
and though, in case of a special Court, the time limited by  
the Commission expire.

(9) All parties, ministers of the law, jurors and witnesses <sup>Attendance of  
Jurors, etc., at  
adjourned  
Court.</sup>  
summoned, shall, if required by the presiding Judge at the  
time of the adjournment, attend such adjourned Court; or  
new Juries may be drawn and summoned to attend, and be  
charged with the like pains and penalties for any misde-  
meanor or default at such adjourned Court as at the first  
Court, but no witness in a civil cause shall be liable to any  
proceeding for non-attendance, unless duly served with a  
subpoena to attend such adjourned Court, and his expenses be  
paid or tendered. No new cause shall be entered for trial at  
such adjourned Court.

(10) At all sittings hereinbefore mentioned separate lists <sup>Trial lists.</sup>  
shall be made for the jury and non-jury causes; and the jury  
causes shall be first disposed of, unless where the Judge shall  
see fit for some special reason to direct otherwise.

(11) The Judges of the Court of Appeal may, in addition <sup>Power to  
Judges of  
Court of Ap-  
peal to sit in  
Trial Courts.</sup>  
to other duties as Judges of such Court, preside over Courts  
of Assize and Nisi Prius, Oyer and Terminer and General  
Gaol Delivery, and hold sittings of the Trial Division for the  
trial of the several causes, matters and issues, and criminal  
matters or proceedings; and every such Judge, in the exercise  
of such duties, shall have the same rights, powers and privi-  
leges as a Judge of the Trial Division presiding at such Court  
or sitting.

#### BARRISTERS, OFFICERS OF COURT, ETC.

**10.** All of His Majesty's Counsel and Barristers of the <sup>Existing  
Counsel and  
Barristers.</sup>  
outer Bar of the Supreme Court shall be members of the Bar  
of the Court, retaining all existing rank, precedence, powers,  
rights, privileges and immunities.

**11.** All Attorneys on the roll of the Supreme Court shall <sup>Existing  
Attorneys-at-  
Law.</sup>  
be solicitors and officers of the Court, and shall retain the  
same precedence, powers, rights, privileges and immunities and

6 Edw. VII.,  
c. 37.

be subject to the same summary procedure in cases of misconduct as heretofore. All Commissioners for taking affidavits to be read in the Supreme Court, and all other Commissioners of the Court, not herein otherwise mentioned, are hereby continued in office and shall have the like powers and jurisdiction respecting the Court hereby created as they heretofore have had.

Prisons of  
Court.

**12.** The common gaols of the respective counties shall be the prisons of the Court, except when in due course of law any offender shall be sentenced to a penitentiary.

Sheriffs, etc.,  
to be officers  
of Court.

**13.** All Sheriffs, Deputy Sheriffs and Constables shall be officers of the Court, and shall aid, assist and obey the Court in the exercise of its jurisdiction whenever required to do so.

Contempt of  
Court.

**14.** Any contempt of the Court or of any of the Judges thereof shall be punishable in the like manner as the same has heretofore been punishable by the Supreme Court or a Judge thereof.

Construction  
of existing  
laws.

**15.** All existing laws, statutes or customs relating to the following matters, namely: The appointment of King's Counsel, the admission of Barristers and Attorneys, Commissioners for taking affidavits to be read in the Supreme Court, the Law Libraries at Fredericton and Saint John, the taking out of practicing certificates, the Clerk of the Pleas, the assistant and deputy, the Reporter of the Supreme Court, the Reporter of the Supreme Court in Equity, the Usher and Messenger of the Supreme Court, Stenographers, Law Stamps, the arrest, imprisonment and examination of debtors, absconding debtors, controverted elections, foreign judgments, witnesses and evidence, juries, the qualification of Judges of the Supreme Court, memorials and executions, Notaries Public, the winding-up of companies, and all existing laws or statutes either of the Parliament of Canada, or of the Legislative Assembly of this Province, by the provisions of which any duty, power, jurisdiction or authority is conferred upon or which in any manner relate to the Supreme Court, the Supreme Court in Equity, or any Judge thereof, shall be construed as if the same had been enacted with special reference to the Court hereby created or the Judges thereof, and as though the words "Supreme Court of Judicature" were inserted in lieu of the words "Supreme Court" or "Supreme

Court in Equity," as the case may be, in any of the said Acts, laws or statutes. Where in any of the said Acts, laws or statutes reference is made to any act, duty, power, jurisdiction or authority in respect to Circuit Courts such Acts, laws or statutes shall be read and construed as if such reference had been in respect to the Trial Courts or sittings of Court of the Trial division mentioned in this Act.

6 Edw. VII.,  
c. 37.

#### JURISDICTION OF THE COURT.

**16.** The Court shall administer the common and statute law of this Province and of the Dominion of Canada, and such of the statute law of the United Kingdom as is in force herein as it now is until the same shall be repealed, altered or amended by competent legislative authority.

Common and  
statute law to  
be adminis-  
tered.

**17.** In any cause or matter pending before the Court of Appeal any direction incidental thereto, not involving the decision of the appeal may be given by a single Judge of the Court of Appeal, and a single Judge of the Court of Appeal may at any time during vacation make an interim order to prevent prejudice to the claims of any parties pending an appeal as he may think fit; but every such order made by a single Judge may be confirmed, discharged or varied by the Court of Appeal.

Power of  
single Judge  
in Court of  
Appeal.  
[J. A. 1873, s.  
52; R. S. O.  
1897, c. 51, s.  
54].

**18.** The Judges of the Court residing in Saint John shall, in rotation or otherwise, as they may agree among themselves, sit each day, except in vacation, in Chambers at the City of Saint John, from the hour of eleven o'clock in the forenoon to one o'clock in the afternoon, and such other hours as may be necessary for the despatch of business, and there transact any such business as may be transacted by a single Judge out of Court, subject to the right of appeal as provided in this Act, and the Rules from time to time in force.

Chamber  
sittings in  
Saint John.  
[Cf. R. S. O.  
1897, c. 51, s.  
44].

**19.** The several jurisdictions vested in the Court shall not be exercised except in the name of the Supreme Court of Judicature, save as otherwise in this Act or Rules provided.

Exercise of  
jurisdiction in  
name of Court.

**20.** The jurisdiction of the Court shall be exercised (so far as regards procedure and practice) in the manner provided by this Act, and the Rules herewith, or by Rules and Orders of Court, to be made pursuant to this Act; and where no special provision is contained in this Act, or in any such Rules

(80 Rules as to)  
exercise of  
jurisdiction.  
[Cf. J. A. 1873,  
s. 23; R. S. O.  
1897, c. 51, s.  
48].

6 Edw. VII.,  
c. 37.

or Orders with reference thereto, it shall be exercised as nearly as may be in the same manner as the same might have been exercised prior to the commencement of this Act.

✓  
Declaration as  
to validity of  
statute of  
Province.  
[R. S. O. 1897,  
c. 51, s. 87 (2)].

21. The Court shall have jurisdiction to entertain an action at the instance of either the Attorney-General for the Dominion, or the Attorney-General of this Province, for a declaration as to the validity of any statute, or any provision in any statute of this legislature, though no further relief should be prayed or sought; and the action shall be deemed sufficiently constituted if the two officers aforesaid are parties thereto. A judgment in the action shall be appealable like other judgments of the said Court.

Pending  
business.  
[Cf. J. A. 1873,  
s. 22].

22.—(1) In all actions, causes, matters and proceedings whatsoever, which shall have been heard, and in which judgment shall not have been given, or, having been given, shall not have been signed, drawn up, passed, entered, or otherwise perfected, at the time appointed for the commencement of this Act, such judgment, decree, rule or order may be given or made, signed, drawn up, passed, entered or perfected respectively, after the commencement of this Act, and by the Judges and officers to be appointed or continued hereunder, and generally in the same manner in all respects as if this Act had not passed; and the same shall take effect, to all intents and purposes, as if the same had been duly perfected before the commencement of this Act.

(2) Every judgment, decree, rule or order of the Supreme Court, whether at law or in equity, which shall have been duly perfected at any time before the commencement of this Act, may be executed and enforced, and, if necessary, amended or discharged by the Court, in the same manner as if it had been a judgment, decree, rule or order of the Court made after the coming into force of this Act.

(3) Save as in this section it is otherwise provided, all causes, actions and proceedings whatsoever, pending in the Supreme Court, or the Supreme Court in Equity, at the commencement of this Act, shall be continued and concluded in and before the Court by this Act created, and the Judges and officers thereof, in accordance with the practice and procedure in force at the commencement of this Act, unless it is impracticable to carry on the same except under the provisions of this Act and Rules herewith, and the said

Court and the Judges and officers thereof shall have the same jurisdiction and authority for so continuing, concluding and also for enforcing the same as if this Act had not been passed. Motions, applications and appeals in connection with such pending causes, actions and proceedings which would have been made to the Supreme Court *en banc* shall be made to the Court of Appeal, which shall have the same power and jurisdiction in respect thereof as the Supreme Court *en banc* would have had.

6 Edw. VII.,  
c. 37.

## RULES OF LAW.

**23.** In every civil cause or matter commenced in the Court, law and equity shall be administered therein according to the rules following:

Law and  
equity to be  
concurrently  
administered.

(1) If any plaintiff or petitioner claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title or claim whatsoever, asserted by any defendant or respondent in such cause or matter, or to any relief founded on a legal right which heretofore could only have been given by a Court of Equity, the Court and every Judge thereof shall give to such plaintiff or petitioner such and the same relief as ought to have been given by the Supreme Court in Equity in a suit or proceeding for the same or the like purposes properly instituted before the commencement of this Act.

Equitable  
relief to  
plaintiff.  
[J. A. 1873, s. 24  
(1); R. S. O.  
1897, c. 51, s. 57  
(1)].

(2) Subject to appeal as in other cases, the Court shall have power to relieve against all penalties and forfeitures, and in granting such relief to impose such terms as to costs, expenses, damages, compensation, and all other matters, as the Court thinks fit.

Relief against  
penalties, etc.  
[R. S. O. 1897, c.  
51, s. 57 (3)].

(3) If any defendant claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument or contract, or against any right, title or claim asserted by any plaintiff or petitioner in such cause or matter, or alleges any ground of equitable defence to any claim of the plaintiff or petitioner in such cause or matter, the Court and every Judge thereof shall give to every equitable estate, right or ground of relief so claimed, and to every equitable defence so alleged, such and the same effect by way of defence against the claim of such plaintiff or petitioner as the Supreme Court in Equity ought to have given if the same or the like matters had been relied on by way of

Equitable  
defences.  
[J. A. 1873, s. 24  
(2); R. S. O.  
1897, c. 51, s. 6].



6 Edw. VII.,  
c. 37.

defence in any suit or proceeding instituted in the Court of Equity for the same or the like purposes before the commencement of this Act.

Relief to  
defendants.

[J. A. 1873, s. 24  
(3); R. S. O.  
1897, c. 51, s. 57  
(7)].

(4) The Court and every Judge thereof shall also have power to grant to any defendant, in respect of any equitable estate or right, or other matter of equity, and also in respect of any legal estate, right or title claimed or asserted by him, all such relief against any plaintiff or petitioner as such defendant shall have properly claimed by his pleading, and as the said Court, or any Judge thereof, might have granted in any suit instituted for that purpose by the same defendant against the same plaintiff or petitioner; and also all such relief relating to or connected with the original subject of the cause or matter, and in like manner claimed against any other person, whether already a party to the same cause or matter, or not, who shall have been duly served with notice in writing of such claim pursuant to any rule of Court, or any order of the Court, that might properly have been granted against such person if he had been made a defendant to a cause duly instituted by the same defendant for the like purpose; and every person served with any such notice shall thenceforth be deemed a party to such cause or matter, with the same rights in respect of his defence against such claim as if he had been duly sued in the ordinary way by such defendant.

Court to take  
notice of equitable  
rights.  
[J. A. 1873, s. 24  
(4); R. S. O.  
1897, c. 51, s. 57  
(8)].

(5) The Court and every Judge thereof shall recognize and take notice of all equitable estates, titles and rights, and all equitable duties and liabilities appearing incidentally in the course of any cause or matter, in the same manner in which the Supreme Court in Equity would have recognized and taken notice of the same in any suit or proceeding duly instituted therein before the commencement of this Act.

Restraining  
proceedings.  
[J. A. 1873, s. 24  
(5); R. S. O.  
1897, c. 51, s. 57  
(9)].

(6) No cause or proceeding, at any time pending in the Court, shall be restrained by prohibition or injunction, but every matter of equity on which an injunction against the prosecution of any such cause or proceeding might have been obtained if this Act had not passed, either unconditionally or on any terms or conditions, may be relied on by way of defence thereto. Provided always, that nothing in this Act contained shall disable the Court from directing a stay of proceedings in any cause or matter pending before it, if it shall see fit; and any person, whether a party or not to any such cause or matter, who would have been entitled, if this Act had

not passed, to apply to any Court to restrain the prosecution thereof, or who may be entitled to enforce, by attachment or otherwise, any judgment, decree, rule or order, contrary to which all or any part of the proceedings in such cause or matter may have been taken, shall be at liberty to apply to the Court by motion in a summary way, for a stay of proceedings in such cause or matter either generally or so far as may be necessary for the purposes of justice; and the Court shall thereupon make such order as shall be just.

6 Edw. VII.  
c. 37.

(7) Subject to the aforesaid provisions for giving effect to equitable rights and other matters of equity in manner aforesaid, and to the other express provisions of this Act, the Court and every Judge thereof shall recognize and give effect to all legal claims and demands, and all estates, titles, rights, duties, obligations and liabilities existing by the common law or created by any statute, in the same manner as the same would have been recognized and given effect to, if this Act had not passed, by the Supreme Court, either at law or in equity.

Legal and statutory rights to be recognized.  
[J. A. 1873, s. 21 (6); R. S. O. 1897, c. 51, s. 57 (11)].

(8) The Court in the exercise of the jurisdiction vested therein by this Act in every cause or matter pending before said Court shall have power to grant, and shall grant, either absolutely or on such reasonable terms and conditions as to the said Court shall seem just, all such remedies whatsoever, as any of the parties thereto may appear to be entitled to in respect of any and every legal or equitable claim properly brought forward by them respectively in such cause or matter; so that as far as possible all matters so in controversy between the said parties respectively, may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided.

Multiplicity of proceedings to be avoided. Final determination of matters in controversy.  
[J. A. 1873, s. 24 (7); R. S. O. 1897, c. 51, s. 57 (12)].

**24.—**(1) No claim of a *cestui qui trust* against his trustee for any property held on an express trust, or in respect of any breach of such trust, shall be held to be barred by any statute of limitations.

Rules of Law upon certain points. Statute of Limitations not to apply to express trusts.  
[J. A. 1873, s. 25 (2); R. S. O. 1897, c. 51, s. 58 (1)].

(2) An estate for life without impeachment of waste shall not confer or be deemed to have conferred upon the tenant for life, any legal right to commit waste of the description known as equitable waste, unless an intention to confer such right shall expressly appear by the instrument creating such estate.

Equitable waste.  
[J. A. 1873, s. 25 (3); R. S. O. 1897, c. 51, s. 58 (2)].

(3) There shall not, after the commencement of this Act, be any merger by operation of law only of any estate, the bene-

Merger.  
[J. A. 1873, s. 25 (4); R. S. O. 1897, c. 51, s. 53 (3)].

6 Edw. VII.,  
c. 37.

official interest in which would not be deemed to be merged or extinguished in equity.

Action for  
possession of  
land by mort-  
gagors.  
[Cf. J. A. 1873,  
s. 25 (5);  
R. S. O. 1897,  
c. 51, s. 58 (4)].

(4) A mortgagor entitled for the time being to the possession or receipt of rents and profits of any land, as to which no notice of his intention to take possession or to enter into the receipt of the rents and profits thereof shall have been given by the mortgagee may sue for such possession, or sue or distrain for the recovery of such rents or profits, or to prevent or to recover damages in respect of any trespass or other wrong relative thereto in his own name only, unless the cause of action arises upon a lease or other contract made by him jointly with any other person, and in that case he may sue or distrain jointly with such other person.

Assignment  
of debts and  
choses in  
action.  
[Cf. J. A. 1873,  
s. 25 (6);  
R. S. O. 1897,  
c. 51, s. 58 (5),  
(6)].

(5) Any absolute assignment by writing under the hand of the assignor (not purporting to be by way of charge only) of any debt or other legal chose in action, of which express notice in writing shall have been given to the debtor, trustee or other person from whom the assignor would have been entitled to receive or claim such debt or chose in action, shall be and be deemed to have been effectual in law (subject to all equities which would have been entitled to priority over the right of the assignee if this Act had not passed) to pass and transfer the legal right to such debt or chose in action from the date of such notice, and all legal and other remedies for the same, and the power to give a good discharge for the same, without the concurrence of the assignor; provided always, that if the debtor, trustee, or other person liable in respect of such debt or chose in action, shall have had notice that such assignment is disputed by the assignor or any one claiming under him, or of any other opposing or conflicting claims to such debt or chose in action, he shall be entitled, if he think fit, to call upon the several persons making claim thereto to interplead concerning the same; or he may, if he think fit, pay the same into the Court upon obtaining a Judge's order therefor to abide the determination of the Court in respect thereof.

Stipulations  
not of the  
essence of con-  
tract.  
[J. A. 1873, s.  
25 (7); R. S. O.  
1897, c. 51,  
s. 58 (7)].

(6) Stipulations in contracts as to time or otherwise, which would not before the commencement of this Act have been deemed to be or to have become of the essence of such contracts in a Court of Equity, shall receive in the Court the same construction and effect as they would heretofore have received in Equity.

(7) In questions relating to the custody and education of infants, the rules of equity shall prevail. 6 Edw. VII., c. 37.

(8) Generally, in all matters not hereinbefore particularly mentioned, in which there is any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter, the rules of equity shall prevail. Infants. [J. A. 1873, s. 25 (10); R. S. O. 1897, c. 51, s. 58 (12)]. Conflict between law and equity. [J. A. 1873, s. 25 (11); R. S. O. 1897, c. 51, s. 58 (13)].

(9) In the administration by the Court of the assets of any person who may die after the commencement of this Act, and whose estate may prove to be insufficient for the payment in full of his debts and liabilities, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors, and as to debts and liabilities provable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being in England under the Law of Bankruptcy with respect to the estates of persons adjudged bankrupt; and all persons who in any such case would be entitled to prove for and receive dividends out of the estate of any such deceased person, may come in under the decree or order for the administration of such estate, and make such claims against the same as they may respectively be entitled to by virtue of this Act. Proof in administration of assets of deceased person. [Cf. J. A. 1875, s. 10].

**25.** The several rules of law enacted and declared by this Act shall be in force and receive effect in all Courts in New Brunswick, so far as the matters to which such rules relate shall be respectively cognizable by such Courts. Rules of law to apply to all Courts. [J. A. 1873, s. 91; R. S. O. 1897, c. 51, s. 59].

#### ABOLITION OF TERMS, ETC.

**26.** The legal year shall not be divided into Terms so far as relates to the administration of justice; and there shall not be Terms applicable to any sitting or business of the Court or of any Commissioners of Assize; but in all cases in which, under the law existing at the commencement of this Act, the Terms into which the legal year is divided are used as a measure for determining the time at or within which any act is required to be done, the same may continue to be referred to for the same or the like purpose, unless and until provision is otherwise made by any lawful authority. Subject to rules of Court, the Court and the Judges thereof, or any such Commissioner as aforesaid, shall have power to sit and act at any time and place for the transaction of any part of the business of the Court, or of such Judges or Commissioners, or for Abolition of terms. [Cf. J. A. 1873, s. 26; R. S. O. 1897, c. 51, s. 61]. Power to Court and Judges to transact business at any time.

6 Edw. VII.  
c. 37. the discharge of any duty which by any statute, or otherwise,  
Return days. is required to be discharged. The first Tuesday appointed for  
the holding of sessions of the Court of Appeal, and the three  
Saturdays thereafter, shall be days for the teste and return  
of all writs and processes required to be tested or made re-  
turnable at any particular time in session.

## TRIAL AND PROCEDURE.

Actions of  
libel, etc., to  
be tried by  
jury.  
[Cf. C. S. 1903,  
c. 111, s. 160 (2);  
R. S. O. 1897, c.  
51, s. 102; O. 36,  
r. 2, (E)]. **27.** In actions of libel, slander, criminal conversation,  
seduction, malicious arrest, malicious prosecution and false  
imprisonment, all issues and questions of fact which might  
heretofore have been tried by a jury, shall be tried by a jury,  
unless the parties in person or by their solicitors or counsel  
waive such trial.

Cases formerly  
within  
exclusive  
jurisdiction of  
Court in  
Equity.  
[Cf. O. 36, r. 3,  
(E); R. S. O.  
1897, c. 51, s.  
103]. **28.** Subject to rules of Court, all causes, matters and  
issues over the subject of which, prior to the commencement  
of this Act, the Supreme Court in Equity had exclusive  
jurisdiction, shall be tried without a jury unless otherwise  
ordered by the Judge before whom the same is to be tried.

Other causes  
to be tried by  
Judge without  
a jury unless  
jury required  
by party.  
[Cf. C. S. 1903,  
c. 111, s. 160 (3),  
(4), (5); R. S. O.  
1897, c. 51, ss.  
105, 106, 107 (2)]. **29.—**(1) Subject to rules of Court, all causes and issues  
other than aforesaid, and the assessment or inquiry of  
damages, may, and (subject to the provisions of section 30)  
in the absence of such notice as is in sub-section 2 of this  
section mentioned, shall be heard, tried and assessed by a  
Judge without a jury.

(2) If any of the parties desires the issues of fact to be  
tried or damages to be assessed or enquired of by a jury, he  
shall, at least ten days before the sittings or Court at which  
the action is to be tried, or within such other time as may be  
ordered by the Court or a Judge, serve on the opposite party  
a notice in writing to the effect following, that is to say:—  
“The plaintiff (or one or more of them, or the defendant, or  
one or more of them, *as the case may be*) requires that the  
issues in this cause be tried (or the damages assessed) by a  
jury,” and a copy of the notice shall be attached to the  
record or copy of the pleadings in the action for the use of  
the Judge.

Notice to  
opposite party.  
Notice to  
Sheriff. (3) He shall also serve a like notice on the Sheriff at least  
ten days before such sittings or Court, and it shall also be the  
duty of the plaintiff's solicitor in any of the actions mentioned

in section 27 to give notice to the Sheriff at least ten days before the sittings or Court for which he has given the notice of trial of such action, informing the Sheriff that it is his intention to bring such action to trial at the sittings or Court for which such notice of trial has been given. 6 Edw. VII., c. 37.

(4) The parties present at the trial may consent that the notice requiring a jury shall be waived, and the case tried and damages assessed by the Judge, and may endorse a memorandum of such consent upon the record, and thereupon the Judge may try the issues or assess the damages without a jury. Consent to trial without jury.

**30.** Notwithstanding anything in the next preceding section contained, the Judge presiding at the trial may, in his discretion, direct that the action or issues shall be tried or the damages assessed by a jury; and upon application to the Court in which the action is pending, or to a Judge thereof, by an order made before the trial, or by the direction of the Judge presiding at the trial, the issues may be tried and damages assessed without a jury. Trial by jury by direction of Judge. [Cf. O. 36, r. 7a, (E); C. S. 1903, c. 111 s. 161; R. S. O. 1897, c. 51, s. 110].

#### VERDICT.

**31.** Upon a trial by a jury, where the Court or the presiding Judge otherwise directs, it shall not be lawful for the jury to give a general verdict, and it shall be the duty of the jury to give a special verdict if the Court or presiding Judge so directs; and unless the Court or the presiding Judge otherwise directs, the jury may give either a general or a special verdict; but this section shall not apply to actions of libel. Court may direct jury to give special verdict. [C. S. 1903, c. 111, s. 162; R. S. O. 1897, c. 51, s. 111].

**32.** Upon a trial by jury, in any case except an action for libel, slander, criminal conversation, seduction, malicious arrest, malicious prosecution or false imprisonment, the Judge, instead of directing the jury to give either a general or special verdict, may direct the jury to answer any questions of fact stated to them by the Judge for the purpose; and in such case the jury shall answer such questions, and shall not give any verdict, and on the findings of the jury upon the questions which they answer, the Judge shall enter a verdict, and the verdict so entered shall be as effectual as if the same had been the verdict of the jury, and on the trial of any such case, counsel may require the Judge presiding to submit to the jury any pertinent or relevant question raised by any of the issues or necessary to be answered by the jury in order to a complete In certain cases jury may be directed to answer question on the answers to which the Judge shall enter verdict. [Cf. C. S. 1903, c. 111, s. 163; R. S. O. 1897, c. 51, s. 112]. Submission of question to jury at instance of Counsel.

6 Edw. VII.,  
c. 37.

determination of all matters involved in the case, and in the event of any presiding Judge refusing to put to the jury any such question as aforesaid, required by counsel to be so submitted, such refusal may be used as a ground for a new trial.

Docket of  
cases.

**33.**—(1) At each sitting or Court the Clerk shall make up a docket of jury and non-jury cases, entering first the jury cases, unless the presiding Judge otherwise orders.

Jury fee not  
payable on  
non-jury cases.

(2) In the case of non-jury cases, no jury fee need be paid to the Clerk of the Court on entry.

#### INTEREST.

Interest  
payable as  
heretofore.  
[R. S. O. 1897, c.  
51, s. 113].

**34.** Interest shall be payable in all cases in which it is now payable by law, or in which it has been usual for a jury to allow it.

When allowed  
on debts  
certain.  
[Cf. C. S. 1903,  
c. 111, s. 180; R.  
S. O. 1897, c. 51,  
s. 114].

**35.**—(1) On the trial of any issue, or any assessment of damages, upon any debt or sum certain, payable by virtue of a written instrument at a certain time, interest may be allowed to the plaintiff from the time when the debt or sum became payable.

(2) If such debt or sum be payable otherwise than by virtue of a written instrument at a certain time, interest may be allowed from the time when a demand of payment is made in writing, informing the debtor that interest will be claimed from the date of the demand.

Interest as  
damages in  
certain  
actions.  
[Cf. C. S. 1903,  
c. 111, s. 181; R.  
S. O. 1897, c. 51,  
s. 115].

**36.** In actions for conversion of goods or for trespass *de bonis asportatis*, the jury, or the Judge when the case is tried without a jury, may give interest in the nature of damages over and above the value of the goods at the time of the conversion or seizure, and in actions on policies of insurance may give interest over and above the money recoverable thereon.

Interest on  
judgments.  
[Cf. C. S. 1903,  
c. 111, s. 182; R.  
S. O. 1897, c. 51,  
s. 116].

**37.** Unless it is otherwise ordered by the Court, a verdict or judgment shall bear interest from the time of the rendering of the verdict (or of the giving the judgment, as the case may be), notwithstanding that the entry of judgment upon the verdict, or upon the giving of the judgment, shall have been suspended by any proceedings in the action, whether in the Court in which the action is pending or on appeal.

## MONEY IN CONTROL OF COURT.

6 Edw. VII.,  
c. 37.

**38.** Subject to the provisions of the next following section, all moneys subject to the control of the Court shall be paid into the hands of such person or body corporate, or be invested in such securities as any Judge shall from time to time direct; and all increase thereof shall be added to the principal and distributed therewith to the person entitled to the same.

Disposition of  
money under  
control of  
Court.[C. S. 1903,  
c. 112, s. 135; see  
O. 22, r. 12,  
post].

**39.**—(1) When any moneys are, during the pendency of any suit or proceeding in the Court, ordered or decreed to be paid into Court or to any officer thereof, to be subject wholly or in part to the further order or decree of the Court, the same, or so much thereof as may be subject to such further order or decree, shall be forthwith paid to the Registrar, and all such moneys so received by the Registrar, whether from such other officer to whom the same may be paid in the first instance, or otherwise, shall be by him forthwith deposited with the Receiver-General of the Province, who shall give a receipt therefor, to be filed by the Registrar.

Money paid in-  
to Court to be  
deposited by  
Registrar  
with Receiver-  
General.  
[Cf. C. S. 1903,  
c. 112, s. 136].

(2) The Receiver-General shall hold all moneys received by him under the provisions of this section subject to the order or decree of the Court, and no moneys so received by him shall be drawn out except by the order of a Judge of the Court, signed by the Registrar and countersigned by such Judge, and no such order shall be made unless it is first certified to the Judge by the Registrar that such money has been duly deposited with the Receiver-General, and payment of all such moneys by the Receiver-General shall be by warrant in the usual manner; provided, however, that nothing in this sub-section contained shall be taken to conflict with or override any provisions in Order XXII. of the Rules herewith, or in the Regulations in Appendix M. of said Rules, but effect shall be given to the provisions of said Order and Regulations, whenever inconsistent herewith, as though this sub-section had not been passed.

Payment out  
of money on  
order of  
Judge.

Proviso.

(3) The Receiver-General shall keep a separate account of the moneys paid in to the credit of each cause, and shall allow upon all such moneys as remain on deposit with him more than six months interest at the rate of three per cent. per annum from the time when such moneys have been paid to him under the provisions of this Act.

Receiver-  
General's  
accounts.

Interest.



6 Edw. VII.,  
c. 37.  
Orders by  
Court.

(4) The Court shall, from time to time, make such orders as may be necessary to carry out the provisions of this section.

## OFFICIAL REFEREES.

Continuance  
in office  
of present  
Official  
Referees.

**40.** The persons who, at the commencement of this Act, shall have been appointed and shall be acting as Referees in Equity, under the provisions of Chapter 112 of The Consolidated Statutes, 1903, shall, from and after the commencement of this Act, be called Official Referees, and shall continue to discharge the duties of Official Referees under this Act and Rules of Court until their death, resignation, or removal from office.

Appointment  
of Official  
Referees.

**41.** The Lieutenant-Governor in Council is hereby authorized, upon any vacancy occurring in the office of Official Referee, to fill such vacancy by the appointment of a Barrister-at-Law of not less than five years' standing at the Bar of New Brunswick, and also, from time to time, appoint as additional Official Referees, Barristers-at-Law of not less than five years' standing at the Bar, but so that there shall not be more than five Official Referees for the City and County of Saint John, nor more than three for each of the Counties of York, Northumberland and Westmorland, nor more than two for each of the other counties of the Province.

Oath by  
Official  
Referees.

**42.** Every Official Referee shall, previously to his executing any of the duties of his office, take the following oath, which the Chief Justice, or any one of the Judges of the Court, or any Judge of the County Court, outside of the Counties of York and Saint John, is hereby authorized to administer:—"I do solemnly and sincerely promise and swear that I will duly and faithfully, and to the best of my skill and power, execute the office of Official Referee—So help me God," and shall give such security for the faithful performance of his duties as the Lieutenant-Governor in Council shall require.

Security.

Official  
Referee not  
disqualified  
from practising.

**43.** The appointment of any person as Official Referee shall not disqualify or disable such person from acting or practising as counsel or solicitor in the Court in any action, matter or proceeding other than that in which such person may act or shall have acted as Referee.

Official  
Referee not to  
act in matter  
in which he is  
interested.

**44.** No Official Referee shall act in any matter or proceeding in which his professional co-partner is solicitor or in

any manner interested, nor in any case where such Referee is the clerk or in the employment of any solicitor or counsel in the action, matter or proceeding.

6 Edw. VII.,  
c. 37.

REGISTRAR, DEPUTY REGISTRAR, AND ASSISTANT REGISTRAR.

**45.** The Lieutenant-Governor in Council is hereby authorized to appoint a fit and proper person to be the Registrar of the Court. The person who has heretofore filled the office of Clerk of the Pleas shall be the Registrar of the Court, and shall have his office in Fredericton, in the same place where the office of the Clerk of the Pleas now is, in which office shall be filed, recorded or enrolled all writs, processes, pleadings, judgments, orders, decrees, documents, and papers, which by any law, custom, statute or rule, or the Rules of Court herewith, or by any order of the Court or any Judge thereof, are required or may be ordered to be filed, recorded or enrolled.

Registrar of  
Court.

Filing of docu-  
ments, etc., in  
office.

**46.** The Registrar shall hold office during pleasure, and shall receive a yearly salary to be fixed by the Lieutenant-Governor in Council, which salary shall be paid in monthly payments by warrant of the Lieutenant-Governor. The Registrar shall give to His Majesty such security for the faithful performance of his duties, and for the accounting of all such moneys as may come into his hands as the Lieutenant-Governor in Council may deem sufficient and proper. He shall be a Barrister of the Court of five years' standing, and shall not be allowed to practice in any Court.

Salary of  
Registrar.

Security.

**47.** The Registrar shall discharge all such duties as are similar or of a like nature to those heretofore discharged by the Clerk of the Pleas, the Clerk in Equity, the Clerk of the Crown and the King's Remembrancer. He shall attend all sessions and sittings of the Court of Appeal, and shall keep the records and minutes thereof; he shall sign and seal all processes of the Court, draw all orders, decrees and judgments thereof, and tax all bills of costs where taxation is necessary.

Duties of  
Registrar.

**48.** The contingencies of the said office shall be payable by warrant of the Lieutenant-Governor in the like manner as other public departments.

Contingencies  
of Registrar's  
office.

**49.** The yearly sum of not more than one thousand dollars is hereby granted to the Lieutenant-Governor for the salary of an Assistant Registrar, to be appointed by the

Assistant  
Registrar and  
salary.

6 Edw. VII.,  
c. 37.

Lieutenant-Governor in Council, and to be under the direction of the Registrar. Such salary shall be payable in monthly payments by warrants of the Lieutenant-Governor. The person at present clerk in the office of the Clerk of the Pleas shall be continued as such Assistant Registrar until a new appointment shall be made.

Deputy  
Registrar.

**50.** The Lieutenant-Governor in Council is hereby authorized to appoint some fit and proper person, learned in the law, to act as Deputy Registrar, who shall be attached to the Judge in Equity when holding sittings or transacting business under section 8 (1) of this Act in the City of Saint John, and shall discharge all such duties as are similar or analogous to those heretofore discharged by the Deputy Clerk in Equity. The Deputy Registrar shall hold office during pleasure, and shall receive an annual salary of four hundred dollars, payable monthly by warrant of the Lieutenant-Governor. The present Deputy Clerk in Equity shall continue to perform the duties of Assistant Registrar until a new appointment shall be made.

#### REPORTERS OF THE COURT.

Reporter of  
Court of  
Appeal.

**51.** The Lieutenant-Governor in Council is hereby authorized to appoint some suitable person, learned in the law, to be the Reporter of the opinions, decisions and judgments which may from time to time be given, made and pronounced by the Court of Appeal in, upon or respecting causes pending therein; and it shall be the duty of such Reporter, by his personal attendance, or by any other means in his power, to obtain true and authentic reports of such opinions, decisions and judgments, and such Reporter shall publish not fewer than two hundred copies of the same in pamphlet form after each session of the said Court. The present Reporter of the Supreme Court is hereby continued in his office as Reporter under this section until a new appointment shall be made.

Copyright in  
reports of  
Court of  
Appeal.

**52.** Section 2 of the Acts of Assembly, 6 William IV., Chapter 14, is unrepealed, which section is as follows:

“The sole liberty of printing and reprinting and publishing such reports shall be, and the same is hereby vested in and secured to the author and compiler thereof, his heirs and assigns, and if any person shall print, reprint or publish any such reports without the consent of the author and compiler or proprietor thereof, he shall be liable to an action on the

case at the suit of such proprietor, in which action such proprietor shall recover double the damages he may have sustained by any such infringement of the copyright hereby secured to him."

6 Edw. VII.,  
c. 37.

**53.** In addition to any profits that may arise from the publication and sale of such reports, such Reporter shall receive annually from the Provincial treasury a sum not exceeding twelve hundred dollars, to be paid by warrant of the Lieutenant-Governor, on the certificate of the Chief Justice of the said Court, that such Reporter has diligently performed the duties of this Act required of him for the year for which such allowance may be claimed.

Salary of  
Reporter of  
Court of  
Appeal.

**54.—(1)** The Lieutenant-Governor in Council is hereby authorized to appoint some suitable person, learned in the law, to be the Reporter of the opinions, decisions and decrees which may from time to time be given and made by a Judge of the Court of Appeal while sitting in Equity, under the provisions of sub-section (1) of section 8 of this Act, in, upon or respecting causes and matters pending therein; and it shall be the duty of such Reporter, by his personal attendance, or by any other means in his power, to obtain true and authentic reports of such opinions, decisions and decrees; and such Reporter shall publish not fewer than two hundred copies of the same in pamphlet form every three months. The present Reporter of the Supreme Court in Equity is hereby continued in his office as Reporter under this section until a new appointment shall be made.

Reporter of  
Equity  
decisions.

**(2)** In addition to any profits that may arise from the publication and sale of such reports, such Reporter shall receive annually the sum of five hundred dollars from the Provincial treasury, payable in quarterly payments, to be paid by warrant of the Lieutenant-Governor on the certificate of the Judge sitting in causes and matters under said sub-section (1) of section 8, that such Reporter has diligently performed the duties by this Act required of him for the quarter for which payment is claimed.

Salary of  
Reporter of  
Equity  
decisions.

#### USHER AND MESSENGER.

**55.** The Lieutenant-Governor in Council is hereby authorized to appoint an Usher and Messenger of the Court of

Usher and  
Messenger of  
Court of  
Appeal, etc.

6 Edw. VII.,  
c. 37.

Salary.

Appeal, Divorce Court, Equity Sittings, and Chambers, and he shall be allowed a sum not exceeding three hundred dollars per annum, which amount shall be paid in equal quarterly payments by warrant of the Lieutenant-Governor, and shall be in full for all appropriations and fees whatever formerly or hereafter payable to or receivable by him as such Usher and Messenger and as Crier in any or either of the said Courts. The present Usher and Messenger is continued in office until a new appointment shall be made.

Fees to Crier  
on entry of  
cause.

**56.** The fees formerly payable by the Clerk of the Pleas to the Crier on every cause entered shall hereafter be paid and accounted for by the Registrar to the Receiver-General with the other fees of his office, as part of the public moneys of the Province.

#### DISTRICT CLERKS OF THE COURT.

Appointment  
and duties of  
District  
Clerks.

**57.**—(1) The Lieutenant-Governor in Council is hereby authorized and empowered to appoint an efficient person in each county, whose duty it shall be to perform and exercise within the county for which he is appointed all the duties, powers and authority conferred upon him by this Act or the Rules of Court hereto or hereafter to be made, or which, before the twenty-third day of March, in the year of our Lord one thousand eight hundred and sixty-eight, devolved upon and were exercised by the Clerk of the Crown on the circuits, and the Clerk of the Circuit Courts within said county, under and by virtue of any law, usage or custom then existing in this Province; and for this purpose the powers, duties and authority before that time conferred and imposed by any law, usage or custom existing in this Province upon the said Clerk of the Crown on the circuits, and the Clerk of the Circuit Courts are hereby conferred and imposed upon such person so to be appointed, within the county for which he is appointed, as fully and to all intents and purposes, and with the like force and effect, as if the same were herein enacted with reference to each Clerk to be appointed.

Title and Fees.

(2) The several persons to be appointed shall be called and known as "District Clerk of the Court for the County of \_\_\_\_\_," as the case may be, and shall each be entitled to demand and receive for the several services rendered and performed by him the same fees as were at the

time aforesaid payable to the Clerk of the Crown on the circuits and Clerk of the Circuit Courts. Such District Clerk shall also be paid for his services in opening the Trial Court, certifying jury fees and the like, the sum of eight dollars, to be paid by the secretary-treasurer of the county in which such Court is held, and charged to the contingent fund of the county.

<sup>6 Edw. VII.,  
c. 37.</sup>

(3) The several persons appointed to the office of the District Clerk of the Court under this Act shall each be duly sworn to the true and faithful discharge of the several and respective duties of their respective offices before entering upon the duties of their said offices, before one of His Majesty's Justices of the Peace for the county for which he shall be appointed; and any Justice of the Peace of the county for which such person is so appointed is hereby empowered and authorized to administer such oath; a certificate of such oath having been duly administered, signed by the Justice administering the same, shall be indorsed on the commission of such District Clerk and such District Clerk shall not be deemed to be appointed until such oath is administered and certificate thereof indorsed as aforesaid.

(4) The present Clerks of the Circuits for the different counties, and the Clerks of the Nisi Prius sittings for the County of York, shall continue to act as District Clerks of the Courts of the Trial Division held in their respective counties until new appointments are made, and each of them shall be the District Clerk of the Court for their respective counties under the foregoing provisions relating to District Clerks.

<sup>Continuance  
in office of  
present  
Clerks.</sup>

(5) All examinations, inquisitions and recognizances taken by any Justice of the Peace or Coroner shall immediately thereafter be transmitted by such Justice of the Peace or Coroner to the District Clerk of the Court for the county in which the same may be taken, where the party charged is committed for trial to the Court.

<sup>Inquisitions,  
etc., to be  
transmitted to  
Clerk.</sup>

#### VACATION.

**58.** There shall be a vacation of the Court in each year commencing on the tenth day of July and ending on the tenth day of August. No pleading shall be amended or delivered between said dates, both inclusive; the time of vacation shall

<sup>Vacation.  
[Cf. O. 64, rr. 4,  
& (E); RR. 351,  
352, (O)].</sup>

6 Edw. VII.,  
c. 37.

not be reckoned in the computation of times appointed or allowed in the Rules of the Court herewith for filing, amending or delivering any pleading, unless otherwise directed by the Court or Judge. Any Judge may issue summonses for the purposes of any proceedings at Chambers, returnable after vacation.

[Cf. O. 63, r. 13, (E)].

#### RULES OF COURT.

Amendment,  
etc., of Act  
and Rules by  
Governor in  
Council.

**59.**—(1) The Lieutenant-Governor in Council may, at any time after the passing and before the commencement of this Act, by Order in Council alter, annul or amend any of the provisions of this Act or any of the Rules of Court in the Schedule hereto, and may make any further or additional Rules of Court for carrying this Act into effect, and in particular for all or any of the following matters, that is to say:—

- (a) For regulating the sittings of the Court, including the sittings of the Trial Division and the sitting of the Court for the despatch of Equity business;
- (b) For regulating the pleading, practice and procedure in the Court;
- (c) Generally for regulating any matter relating to the practice and procedure of the Court, or to the duties of the officers thereof, or to the costs of proceedings therein;
- (d) For providing a table or tariff of fees and allowances for services by solicitors and counsel in all causes, actions and matters in the Court, of fees and charges by the Registrar and all other officers of the Court, whether payable in law stamps as heretofore, or otherwise, and of witnesses, and of all fees, charges and allowances proper to be fixed or provided for under this Act and Rules of Court.

Power to  
Judges to  
make Rules of  
Court.

(2) The Judges of the Court may, from time to time, at any meeting held for the purpose, and with the concurrence of the majority of said Judges present at said meeting, make any Rule or Rules of Court, or alter or amend any Rules of Court, respecting the following matters:

- (a) For regulating the sittings of the Court, including the sittings of the Trial Division, and the sittings of the Court for the despatch of Equity business;

(b) For regulating the pleadings, practice and procedure in the Court; 6 Edw. VII., c. 37.

(c) For regulating the means by which particular facts may be proved, and the mode in which evidence thereof may be given on any application upon summons for direction pursuant to Rules of Court;

(d) For the hearing of Appeals from County Courts, or from a Judge of a County Court, from Courts of Probate, or from any other Courts or Judges or officers, or for hearing of motions and appeals from any of the Judges of the Court sitting for the trial of causes or in chambers, or from the Judge in Equity, and for regulating all matters relating to the practice on such appeals; and

(e) Generally, for regulating any matters relating to the practice and procedure of the Court or to the duties of the officers thereof.

(3) All Rules of Court made in pursuance of the preceding sub-section shall come into force on the thirtieth day from and after the publication thereof in the *Royal Gazette*, and thereupon shall regulate all matters to which they extend until annulled or altered in pursuance of this Act, or by Act of the Legislature. When Rules of Court are to come into force.

(4) All Rules of Court made in pursuance of this section shall be laid before the Legislative Assembly within twenty days after the same are made, if the Legislature is then sitting, and if the Legislature is not then sitting, within twenty days after the meeting of the Legislature next after such Rules are made, and if an address praying that any such Rules may be cancelled is presented to the Lieutenant-Governor by the said Legislative Assembly, or within the twenty days in which the Legislature has been sitting next after such Rules are laid before it, the Governor in Council shall thereupon, by Order in Council, annul the same, and the Rules so annulled shall thenceforth become void and of no effect, but without prejudice to the validity of any proceedings which in the meantime have been taken under the same. Rescission of Rules of Court by Governor in Council.

**60.** The Rules of Court in the Schedule hereto shall form part of this Act and shall have the force and effect of a legislative enactment. Rules of Court in Schedule.



6 Edw. VII.,  
c. 37.

Repeal.

**61.** Any enactment inconsistent with this Act is hereby repealed.

#### COMMENCEMENT OF ACT.

Printed Act  
and Rules, etc.,  
to be deposited  
in office of  
Provincial  
Secretary.

Proclamation  
declaring Act  
and Rules in  
force.

**62.** Any alterations and additions to this Act, and the Rules herewith, and any Rules in substitution thereof, made by the Governor in Council pursuant to section 59 (1), shall form part of and be printed with this Act and Rules hereto, and a copy of the Act and Rules with all alterations and additions as aforesaid when printed, shall be attested by the signature of the Lieutenant-Governor and countersigned by the Provincial Secretary and shall be deposited in the office of the Provincial Secretary at Fredericton, and shall thereupon become and form part of the original Roll of the Acts of the Legislative Assembly of New Brunswick, 1906. The Lieutenant-Governor in Council shall thereupon, by proclamation published in the *Royal Gazette*, declare the day on, from and after which this Act and the Rules hereto, including any additions or alterations as aforesaid, shall become and be in force, and the said Act and said Rules shall, on and after such day so declared, become and be in force.

#### COUNTY COURTS.

Act not to  
apply to  
County  
Courts.

**63.** Save as otherwise provided, either in express terms or by necessary implication, nothing in this Act or Rules of Court hereto shall be taken to apply to County Courts or the practice and proceedings therein, and the provisions of chapter 116, Consolidated Statutes, 1903, shall be read and construed as referring to the laws of this Province and to the practice and procedure in the Supreme Court in force and existing and applicable to County Courts before the commencement of this Act.

# SCHEDULE.

## RULES OF COURT, 1906.

### PRELIMINARY.

1. The following Orders and Rules may be cited as "The Rules of Court, 1906." They shall not apply to any proceedings taken on or after the day upon which they shall come into force in any causes and matters then pending, but such proceedings, unless it is impracticable to carry on the same except under the provisions of the principal Act and these Rules, shall be taken in accordance with the law, practice, and rules of Court in force at the commencement of these Rules. All Rules of the Supreme Court inconsistent with these Orders and Rules are, except for the purposes of this Rule and section 22 of the principal Act, rescinded.

<sup>Rules, how cited.</sup>

<sup>Not to apply to pending business. (See s. 22 of Act).</sup>

<sup>Former Rules of Court.</sup>

2. The provisions of *The Interpretation Act*, Chapter 1 of the Consolidated Statutes, 1903, shall apply to these Rules unless there is anything in the subject or context repugnant thereto.

<sup>Application of Interpretation Act.</sup>

### ORDER I.

O. 1.  
rr. 1-3.

#### WRIT OF SUMMONS AND PROCEDURE, ETC.

1. Every action, except in case where it is intended to hold the defendant to bail, shall be commenced by a writ of summons, which shall be indorsed with a statement of the nature of the claim made, or of the relief or remedy required in the action. O. 2, r. 1, (E), *am.*

<sup>1</sup>  
<sup>Commencement of action by writ.</sup>  
<sup>(Cf. R. 120, (O)).</sup>

2. Any costs occasioned by the use of any forms of writs, and of indorsements thereon, other or more prolix than the forms hereinafter prescribed, shall be borne by the party using the same, unless the Court or a Judge shall otherwise direct. O. 2, r. 2. (E).

<sup>2</sup>  
<sup>Costs of prolix writs.</sup>  
<sup>(Cf. R. 1154, (O)).</sup>

**O. I.**  
**rr. 3-4.**  
<sup>3</sup>  
Form of writ.  
[Cf. R. 127, (O)].

**3.** The writ of summons for the commencement of an action shall, except in the cases in which any different form is hereinafter provided, be in one of the Forms Nos. 1 and 2, in Appendix A., Part I., with such variations as circumstances may require. O. 2, r. 3, (E).

<sup>4</sup>  
Leave to issue writ out of jurisdiction.

**4.** No writ of summons for service out of the jurisdiction, or of which notice is to be given out of the jurisdiction, shall be issued without the leave of the Court or a Judge. O. 2, r. 4, (E).

<sup>5</sup>  
Form of writ for service out of jurisdiction.  
[Cf. R. 128, (O)].

**5.** A writ of summons to be served out of the jurisdiction, or of which notice is to be given out of the jurisdiction, shall be in one of the Forms Nos. 3 and 4, in Appendix A., Part I., with such variations as circumstances may require. Such notice shall be in the Form No. 5 in the same Part, with such variations as circumstances may require. O. 2, r. 5, (E).

<sup>6</sup>  
Date and teste of writ.  
[Cf. R. 124, (O)].

**6.** Every writ of summons, and also (unless by any statute or by these Rules it is otherwise provided) every other writ, shall bear date on the day on which the same shall be issued, and shall be tested in the name of the Chief Justice. O. 2, r. 8, (E).

**O. II.**  
**rr. 1-4.**

## ORDER II.

### INDORSEMENT OF CLAIM.

<sup>7</sup>  
Indorsement of claim.  
[Cf. R. 120, (O)].

**1.** The indorsement of claim shall be made on every writ of summons before it is issued. O. 3, r. 1, (E).

<sup>8</sup>  
Indorsement under O. I, r. 1.  
[Cf. R. 137, (O)].

**2.** In the indorsement required by Order I., Rule I., it shall not be essential to set forth the precise ground of complaint, or the precise remedy or relief to which the plaintiff considers himself entitled. O. 3, r. 2, (E).

<sup>9</sup>  
Form of indorsement.  
[Cf. R. 137, (O)].

**3.** The indorsement of claim shall be to the effect of such of the Forms in Appendix A., Part III., as shall be applicable to the case, or, if none be found applicable, then such other similarly concise form as the nature of the case may require. O. 3, r. 3, (E).

<sup>10</sup>  
Indorsement of representative capacity.  
[Cf. R. 120, (O)].

**4.** If the plaintiff sues, or the defendant or any of the defendants is sued, in a representative capacity, the indorsement shall show, in manner appearing by such of the Forms in Appendix A., Part III., Section V., as shall be applicable to

the case, or by any other statement to the like effect, in what capacity the plaintiff or defendant sues or is sued. O. 3, r. 4, (E). ●. III.  
rr. 5-7.

5. In all actions where the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising (A.) upon a contract express or implied (as, for instance, on a bill of exchange, promissory note, or cheque, or other simple contract debt) or (B.) on a bond or contract under seal for payment of a liquidated amount of money; or (C.) on a statute where the sum sought to be recovered is a fixed sum of money, or in the nature of a debt other than a penalty; or (D.) on a guaranty, whether under seal or not, where the claim against the principal is in respect of a debt or liquidated demand only; or (E.) on a trust; or (F.) in actions for the recovery of land, with or without a claim for rent or mesne profits, by a landlord against a tenant whose term has expired, or has been duly determined by notice to quit, or has become liable to forfeiture for non-payment of rent, or against persons claiming under such tenant; the writ of summons may, at the option of the plaintiff, be specially indorsed with a statement of his claim, or of the remedy or relief to which he claims to be entitled. Such special indorsement shall be to the effect of such of the Forms in Appendix C., Section III., as shall be applicable to the case. O. 3, r. 6, (E). 11  
Special  
Indorsement.  
[Cf. R. 133, (O)].

6. Wherever the plaintiff's claim is for a debt or liquidated demand only, the indorsement, besides stating the nature of the claim, shall state the amount claimed for debt, or in respect of such demand, and for costs respectively, and shall further state, that upon payment thereof within six days after service, or in case of a writ not for service within the jurisdiction within the time allowed for appearance, further proceedings will be stayed. Such statement shall be in the Form in Appendix A., Part III., Section III. The defendant may, notwithstanding such payment, have the costs taxed, and if more than one-sixth shall be disallowed, the plaintiff's solicitor shall pay the costs of taxation. O. 3, r. 7, (E). 12  
Indorsement  
where claim is  
liquidated.  
[Cf. R. 133, (O)].

7. In all cases in which the plaintiff in the first instance desires to have an account taken, the writ of summons shall be indorsed with a claim that such account be taken. O. 3, r. 8, (E). 13  
Indorsement  
for account.  
[Cf. R. 140, (O)].

**●. III.  
rr. 1-3.**

**ORDER III.**

**INDORSEMENT OF ADDRESS.**

<sup>14</sup>  
Address of  
plaintiff and  
solicitor to be  
indorsed.  
[Cf. R. 134, (O)].

Address for  
service.

**1.** The solicitor of a plaintiff suing by a solicitor shall indorse upon the writ and notice in lieu of service of a writ the address of the plaintiff, and also his own name or firm and place of business (within the jurisdiction), which latter address shall be the place where writs, notices, pleadings, petitions, orders, summonses, warrants, and other documents, proceedings, and written communications may be left for him. O. 4, r. 1, (E), *am.*

<sup>15</sup>  
Address for  
service of  
plaintiff suing  
in person.  
[Cf. R. 135, (O)].

**2.** A plaintiff suing in person shall indorse on the writ of summons or notice in lieu of service of a writ of summons, his place of residence and occupation, and also, if his place of residence is not within the jurisdiction another place within the jurisdiction to be called his address for service, where writs, notices, pleadings, petitions, orders, summonses, warrants, and other documents, proceedings, and written communications may be left for him. O. 4, r. 2, (E), *am.*

<sup>16</sup>  
Application of  
rules where  
proceedings  
not com-  
menced by  
writ.  
[Cf. R. 136, (O)].

**3.** In all cases where proceedings are commenced otherwise than by writ of summons, the preceding rules of this Order shall apply to the document by which such proceedings shall be originated as if it were a writ of summons. O. 4, r. 4, (E).

**●. IV.  
rr. 1-3.**

**ORDER IV.**

**ISSUE OF WRITS OF SUMMONS.**

<sup>17</sup>  
Writ may be  
issued in any  
county.  
[R. 121, (O)].

**1.** In any action the plaintiff wherever resident may issue a writ of summons in any county. O. 5, r. 1 (E).

<sup>18</sup>  
Writ to be  
signed and  
sealed.

**2.** Every writ of summons shall be signed and sealed by the proper officer. O. 5, r. 11, (E), *am.*

<sup>19</sup>  
Writ to be pre-  
pared by  
plaintiff or  
solicitor.  
[Cf. R. 120, (O)].

**3.** Writs of summons shall be prepared by the plaintiff or his solicitor, and shall be written or printed, or partly written and partly printed. O. 5, r. 10, (E).

**●. V.  
r. 1.**

**ORDER V.**

**CONCURRENT WRITS.**

<sup>20</sup>  
Issuing of con-  
current writ.  
[Cf. R. 122, (O)].

**1.** The plaintiff in any action may, at the time of or at any time during twelve months after the issuing of the original writ of summons, issue one or more concurrent writ or writs, each concurrent writ to bear teste of the same day as the

original writ, and to be marked in the margin with the word "concurrent", and the date of issuing the concurrent writ: Provided always, that such concurrent writ or writs shall only be in force for the period during which the original writ in such action shall be in force. O. 6. r. 1, (E), *am.*

**O. V.  
r. 1.**

2. A writ for service within the jurisdiction may be issued and marked as a concurrent writ with one for service, or whereof notice in lieu of service is to be given, out of the jurisdiction; and a writ for service or whereof notice in lieu of service is to be given, out of the jurisdiction, may be issued and marked as a concurrent writ with one for service within the jurisdiction. O. 6, r. 2, (E).

<sup>21</sup>  
Concurrent  
writs for ser-  
vice within  
and without  
the jurisdic-  
tion.  
[Cf. R. 130, (O)].

## ORDER VI.

**O. VI.**

### DISCLOSURE BY SOLICITORS.

Every solicitor whose name shall be indorsed on any writ of summons shall, on demand in writing made by or on behalf of any defendant who has been served therewith or has appeared thereto, declare forthwith in writing whether such writ has been issued by him or with his authority or privity; and if such solicitor shall declare that the writ was not issued by him or with his authority or privity, all proceedings upon the same shall be stayed, and no further proceedings shall be taken thereupon without leave of the Court or a Judge. O. 7, r. 1, (E).

<sup>22</sup>  
Disclosure by  
solicitor  
whether writ  
issued by him.  
[Cf. R. 143, (O)].

## ORDER VII.

**O. VII,  
r. 1.**

### RENEWAL OF WRIT.

1. No original writ of summons shall be in force for more than twelve months from the day of the date thereof, including the day of such date; but if any defendant therein named shall not have been served therewith, the plaintiff may, before the expiration of the twelve months, apply to the Court or a Judge for leave to renew the writ; and the Court or Judge, if satisfied that reasonable efforts have been made to serve such defendant, or for other good reason, may order that the original or concurrent writ of summons be renewed for six months from the date of such renewal inclusive, and so from time to time during the currency of the renewed writ. And the writ shall in such case be renewed by being marked by

<sup>23</sup>  
Original writ  
in force for  
12 months.  
[Cf. R. 132, (O)].

Renewal, etc.

**O. VII.  
rr. 2-3.**Effect of  
renewal.

the Court or Judge with the day, month and year of such renewal; and a writ of summons so renewed shall remain in force and be available to prevent the operation of any statute whereby the time for the commencement of the action may be limited, and for all other purposes, from the date of the issuing of the original writ of summons. O. 8, r. 1, (E), *am.*

<sup>24</sup>  
Evidence of  
renewal.  
[Cf. R. 133, (O)].

**2.** The production of a writ of summons purporting to have been renewed in manner aforesaid, shall be sufficient evidence of its having been so renewed, and of the commencement of the action as of the first date of such renewed writ for all purposes. O. 8, r. 2, (E), *am.*

<sup>25</sup>  
Lost writ.  
[Cf. R. 131, (O)].

**3.** Where a writ, of which the production is necessary, has been lost, the Court or a Judge, upon being satisfied of the loss, and of the correctness of a signed and sealed copy thereof, may order that such copy shall be served in lieu of the original writ. O. 8, r. 3, (E), *am.*

**O. VIII.  
rr. 1-2.**

## ORDER VIII.

## SERVICE OF WRIT OF SUMMONS.

<sup>26</sup>  
Undertaking  
to accept  
service.  
[Cf. R. 145, (O)].

**1.** No service of writ shall be required when the defendant, by his solicitor, undertakes in writing to accept service, and enters an appearance. O. 9, r. 1, (E).

<sup>27</sup>  
How service  
effected.  
[Cf. R. 146, (O)].

**2.** (1)—When service is required the writ shall, wherever it is practicable, be served in the manner in which personal service is now made.

<sup>28</sup>  
Service on  
defendant's  
wife or on  
adult inmate.

(2) In case the defendant has a known place of abode within the jurisdiction, a writ of summons may be served at such place of abode by delivering a copy thereof to the wife of the defendant, or to an adult person residing in the house and being an inmate of the family of the defendant; provided that such last mentioned service shall not be deemed good without the order of the Court or a Judge to be made upon affidavit, showing the circumstances of such service, and that the place where such writ was served was at the time of such service the usual place of abode of such defendant, and that he was at the time of the service within the jurisdiction of the Court, according to the belief of the person serving such summons, stating his reasons for such belief. C. S. 1903, c. 111, s. 44.

(3) Where service of writ of summons out of the jurisdiction may be allowed under Order XI., r. 1 (1), and the defendant whether a British subject or not, is carrying on business within the jurisdiction, but has no place of residence therein, service of such writ may be effected by leaving a copy of the same at the place of business of the defendant, with an agent or clerk, or other adult person in the employment of the defendant or defendants in such business, and known to the person serving the same as being an agent, clerk or person in the employment of the defendant in such business: Provided that no such service shall be deemed good without the order of a Judge, on satisfactory proof by affidavit of the nature and place of business carried on by the defendant within the Province, and the particular nature of the agency or employment of the person with whom the copy of process was left, and that the action is in respect of a matter or matters for which service of a writ of summons may be allowed under Order XI., r. 1 (1). See C. S. 1903, c. 111, s. 46, *am.*

**O. VIII,  
rr. 3-4.**  
Service on  
agent or clerk  
in business.  
[Cf. R. 147, (O)].

Perfecting of  
service.

(4) If it is made to appear to the Court or a Judge on affidavit that the plaintiff is from any cause unable to effect prompt personal service, or is unable to effect service under the provisions of either of the preceding sub-rules 2 and 3, the Court or Judge may make such order for substituted or other service, or for the substitution for service, of notice by advertisement or otherwise as seems just. See O. 9, r. 2, (E), *am.*

Order for sub-  
stituted  
service.  
[Cf. R. 146, (O)].

**3.** When husband and wife are both defendants to the action they shall both be served unless the Court or a Judge shall otherwise order. O. 9, r. 3, (E).

<sup>29</sup>  
Service on  
husband and  
wife.  
[Cf. R. 151, (O)].

**4.** (1)—When an infant is a defendant to the action, service on his father or guardian, or if none, then upon the person with whom the infant resides or under whose care he is, shall, unless the Court or a Judge otherwise orders, be deemed good service on the infant; provided that the Court or Judge may order that service made or to be made on the infant shall be deemed good service. O. 9, r. 4, (E).

<sup>30</sup>  
Service on  
infant.  
[Cf. R. 152, (O)].

(2) Where the action is against an infant in respect of a personal tort, or for the recovery of money only, personal service upon the infant as in the case of an adult defendant shall be deemed good service. R. 154, (O), *am.*



**O. VIII.  
rr. 5-8.**

<sup>31</sup>  
Service on  
lunatic.  
[Cf. R. 157, (O)].

**5.** When a lunatic or person of unsound mind not so found by inquisition, is a defendant to the action, service on the committee of the lunatic, or on the person with whom the person of unsound mind resides or under whose care he is, shall, unless the Court or a Judge otherwise orders, be deemed good service on such defendant. O. 9, r. 5, (E).

<sup>32</sup>  
Service on  
corporation.  
[Cf. O. 9, r. 8,  
(E)].

**6.** When a corporation is a defendant to the action, service shall, unless the Court or a Judge otherwise orders, be deemed good service if made upon the Mayor, Warden, President or other head officer, or on the Cashier, Treasurer, Manager, Secretary, Clerk or Agent of such corporation or of any branch or agency thereof in this Province; and any other person who within this Province manages, transacts or carries on any of the business of, or any business for any corporation whose chief place of business is without the limits of the Province, shall, for the purpose of being served as aforesaid be deemed an agent thereof. See R. 159, (O); C. S. 1903, c. 111, s. 45.

<sup>33</sup>  
Service in  
action for re-  
covery of land.

**7.** Service of a writ of summons in an action to recover land may, in case of vacant possession, when it cannot otherwise be effected, be made by posting a copy of the writ upon the door of the dwelling-house or other conspicuous part of the property. O. 9, r. 9, (E).

<sup>34</sup>  
Indorsement  
on writ and  
affidavit of  
service by  
Sheriff.  
[Cf. R. 148, (O)].

**8.** Upon the delivery of a writ of summons at the office of any Sheriff, he or his deputy or clerk, shall indorse thereon the day it was so delivered, and shall immediately on the service thereof, return the same with an affidavit of service to the plaintiff's solicitor. C. S. 1903, c. 111, s. 48.

**O. IX.****ORDER IX.**

## SUBSTITUTED SERVICE.

<sup>35</sup>  
Substituted  
service.

Every application to the Court or a Judge for an order for substituted or other service, or for the substitution of notice for service, shall be supported by an affidavit setting forth the grounds upon which the application is made. O. 10, (E).

**O. X.****ORDER X.**

## RETURN OF WRIT THROUGH SHERIFF'S OFFICE.

<sup>36</sup>  
Writ to be  
returned  
through Sher-  
iff's office.

Every writ of summons or process, whether served by the Sheriff or his deputy, or by any other person, shall be returned through the office of the Sheriff of the county in which

such writ or process has been served, and such Sheriff shall be entitled to and shall receive the same fees thereon as if he had made such service, although not served by him, but no mileage shall be allowed unless the service is made by the Sheriff or his deputy; and no writ or process shall be filed or cause entered by the proper officer unless such writ or process is so returned, except in a case where service has been accepted. C. S. 1903, c. 111, s. 51.

●. X.

## ORDER XI.

●. XI,  
P. I.

## SERVICE OUT OF THE JURISDICTION.

1.—(1) Service out of the jurisdiction of a writ of summons or notice of a writ of summons may be allowed by the Court or a Judge whenever —

<sup>37</sup> When service of writ, etc., allowed out of jurisdiction. [R. 162, (O)].

- (a) The whole subject-matter of the action is land situate within the jurisdiction (with or without rents or profits); or
- (b) Any act, deed, will, contract, obligation or liability affecting land or hereditaments situate within the jurisdiction, is sought to be construed, rectified, set aside, or enforced in the action; or
- (c) Any relief is sought against any person domiciled or ordinarily resident within the jurisdiction; or
- (d) The action is for the administration of the personal estate of any deceased person, who at the time of his death was domiciled within the jurisdiction, or for the execution (as to property situate within the jurisdiction) of the trusts of any written instrument, of which the person to be served is a trustee, which ought to be executed according to the law of New Brunswick; or
- (e) The action is founded on any breach or alleged breach within the jurisdiction of any contract wherever made, which, according to the terms thereof, ought to be performed within the jurisdiction; or a tort committed therein; or
- (f) Any injunction is sought as to anything to be done within the jurisdiction, or any nuisance within

**O. XI.  
r. 3.**

the jurisdiction is sought to be prevented or removed, whether damages are or are not also sought in respect thereof; or

(g) Any person out of the jurisdiction is a necessary or proper party to an action properly brought against some other person duly served within the jurisdiction. O. 11, r. 1, (E); *am.* in (e).

(h) Service may also be allowed where the action is for any other matter and it appears to the satisfaction of the Court or a Judge that the plaintiff has a good cause of action against the defendant upon a contract or judgment, and that the defendant has assets within the jurisdiction of the value of \$200 at least, which may be rendered liable for the satisfaction of the judgment, in case the plaintiff should recover judgment in the action; but in such case, if the defendant does not appear, the Court or a Judge shall give directions from time to time as to the manner and conditions of proceeding in the action, and shall require the plaintiff, before obtaining judgment, to prove his claim before a Judge or jury, or in such manner as may seem proper. R. 162, (O).

Service out of the jurisdiction of order, etc., in winding-up proceedings.

(2) Service out of the jurisdiction of any order or notice in the winding-up of a company, may be allowed by the Court or a Judge. R. 162 (2), (O).

Service out of the jurisdiction of petition, etc., in administration proceedings.

(3) Service out of the jurisdiction of a petition or notice of motion in an action or matter relating to the administration of the estate of a deceased person, or to the execution of a trust, or praying for an order dealing with any funds in Court, and in interpleader proceedings, may be allowed by the Court or a Judge. R. 162 (3), (O).

<sup>38</sup>  
Evidence on application for leave to serve writ, etc., out of jurisdiction. [Cf. R. 163, (O)].

2. Every application for leave to serve such writ or notice on a defendant out of the jurisdiction shall be supported by affidavit or other evidence, stating that in the belief of the deponent the plaintiff has a good cause of action, and showing in what place or country such defendant is or probably may be found, and whether such defendant is a British subject or not, and the grounds upon which the application is made; and no such leave shall be granted unless it shall be made

sufficiently to appear to the Court or Judge that the case is a proper one for service out of the jurisdiction under this Order. O. 11, r. 4, (E).

**O. XI,  
rr. 3-7.**

**3. (1)**—Any order giving leave to effect such service or give such notice shall limit a time after such service or notice within which such defendant is to enter an appearance, such time to depend on the place or country where, or within which, the writ is to be served or the notice given. O. 11, r. 5, (E).

<sup>39</sup>  
Order to fix  
time for ap-  
pearance.  
[Cf. R. 164 (1),  
(O)].

**(2)** An order allowing service out of the jurisdiction of a petition or notice of motion shall limit a time when the petition or motion is to be heard. R. 164 (2), (O).

Order to fix  
time for hear-  
ing of petition  
or motion.

**4.** When the defendant is neither a British subject nor in British dominions, notice of the writ, and not the writ itself, is to be served upon him. O. 11, r. 6, (E).

<sup>40</sup>  
Notice in lieu  
of writ.  
[Cf. R. 165 (1),  
(O)].

**5.** Notice of a writ of summons shall be served in the same manner in which writs of summons are served. O. 11, r. 7, (E).

<sup>41</sup>  
Service of  
notice in lieu  
of writ.  
[Cf. R. 165 (2),  
(O)].

**6.** Where a defendant is to be served out of the jurisdiction, with a writ of summons or notice in lieu thereof, the statement of claim shall be served therewith unless the writ is specially indorsed under Order II., Rule 5 or 6. R. 166, (O).

<sup>42</sup>  
Service of  
statement of  
claim with  
writ, unless  
writ specially  
indorsed.  
[R. 166, (O)].

**7** Where a party to an action or matter is absent from the jurisdiction, or cannot be found therein to be served, the Court or a Judge may authorize proceedings to be taken against him according to the practice of the Court in the case of a defendant whose residence is unknown, or in any other manner that may be directed, if the Court or a Judge deems such mode of proceeding conducive to the ends of justice; and service so effected shall be equivalent to personal service upon the party. R. 167, (O).

<sup>43</sup>  
Absent or con-  
cealed party.

## ORDER XII.

**O. XII,  
r. 1.**

### APPEARANCE.

**1.** The mode of appearance to a writ of summons shall be by filing with the proper officer, and serving a copy thereof on the plaintiff's solicitor, or if the plaintiff sues in person, on the plaintiff himself, a memorandum in writing (Form No. 1, in Appendix A., Part II.), stating the name of the solicitor

<sup>44</sup>  
Mode of ap-  
pearance.  
[Cf. O. 12, rr.  
8, 12, (E); RR.  
169, 170, (O)].

**O. XII,  
rr. 3-4.**

by whom the defendant appears, and the solicitor's place of business, which shall thereafter be an address where all pleadings and other proceedings may be left for him, or stating that the defendant appears in person. A defendant appearing in person shall state in such memorandum an address at which all pleadings and other proceedings not requiring personal service may be left for him; and if there are several defendants who appear in person, service at the address of any of them shall be sufficient; such address shall be a place in the county where the plaintiff's solicitor or the defendant resides, and not more than three miles from the Court House; if such address be not given, the appearance shall not be received, and if an illusory or fictitious address be given, the appearance may be set aside by the Court or a Judge on the application of the plaintiff, and the plaintiff permitted to proceed as in case of non-appearance, and whenever any proceeding or notice thereof is thereafter required to be served on such defendant, the same may be served by posting in the office of the proper officer. See C. S. 1903, c. 111, ss. 73, 74.

**45**  
Defendants  
appearing by  
same solicitor.

**2.** If two or more defendants in the same action shall appear by the same solicitor and at the same time, the names of all the defendants so appearing shall be inserted in one memorandum. O. 12, r. 17, (E).

**46**  
Solicitor fail-  
ing to enter  
appearance.  
[R. 174, (O)].

**3.** A solicitor not entering an appearance in pursuance of his written undertaking so to do, shall be liable to an attachment. O. 12, r. 18, (E).

**47**  
Time for ap-  
pearance.  
[Cf. R. 175, (O)].

**4.** A defendant may appear at any time before judgment. If he appear at any time after the time limited by the writ for appearance, he shall not, unless the Court or a Judge shall otherwise order, be entitled to any further time for delivering his defence, or for any other purpose, than if he had appeared according to the writ. O. 12, r. 22, (E).

**48**  
Recovery of  
land.  
[Cf. RR. 180,  
181, (O)].

**5.** Any person not named as a defendant in a writ of summons for the recovery of land may by leave of the Court or a Judge appear and defend, on filing an affidavit showing that he is in possession of the land either by himself or by his tenant. O. 12, r. 25, (E).

**49**  
Appearance  
by landlord.  
[Cf. R. 182, (O)].

**6.** Any person appearing to defend an action for the recovery of land as landlord, in respect of property whereof he is in possession only by his tenant, shall state in his appearance that he appears as landlord. O. 12, r. 26, (E).

7. Where a person not named as defendant in any writ of summons for the recovery of land has obtained leave of the Court or a Judge to appear and defend, he shall file and serve an appearance, according to the foregoing Rules of this Order, intituled in the action against the party named in the writ as defendant, and shall in all subsequent proceedings be named as a party defendant to the action. O. 12, r. 27, (E).

●. XIII,  
rr. 7-8.

50  
Appearance  
by person not  
a party in  
action to re-  
cover land.  
[Cf. R. 183, (O)].

8. Any person appearing to a writ of summons for the recovery of land shall be at liberty to limit his defence to a part only of the property mentioned in the writ, describing that part with reasonable certainty in his memorandum of appearance, or in a notice intituled in the action and signed by him or his solicitor. Such notice shall be served within four days after appearance; and an appearance, where the defence is not limited as above mentioned, shall be deemed an appearance to defend for the whole. O. 12, r. 28, (E).

51  
Appearance  
limiting de-  
fence in action  
to recover  
land.  
[Cf. R. 184, (O)].

9. A defendant before appearing shall be at liberty, without obtaining an order to enter or entering a conditional appearance, to serve notice of motion to set aside the service upon him of the writ or of notice of the writ, or to discharge the order authorizing such service. O. 12, r. 30, (E).

52  
Motion to set  
aside writ,  
without  
appearance.

### ORDER XIII.

●. XIII,  
r. 1.

#### DEFAULT OF APPEARANCE.

1. Where no appearance has been entered to a writ of summons for a defendant who is an infant or a person of unsound mind not so found by inquisition, the plaintiff shall, before further proceeding with the action against the defendant, apply to the Court or a Judge for an order that some proper person be assigned guardian of such defendant, by whom he may appear and defend the action. But no such order shall be made unless it appears on the hearing of such application that the writ of summons was duly served, and that notice of such application was, after the expiration of the time allowed for appearance, and at least six clear days before the day in such notice named for hearing the application, served upon or left at the dwelling-house of the person with whom or under whose care such defendant was at the time of serving such writ of summons, and also (in the case of such defendant being an infant not residing with or under the care

53  
Default of ap-  
pearance by  
infant or per-  
son of unsound  
mind.  
[Cf. RR. 218,  
219, (O)].

**O. XIII,  
rr. 2-5.**

of his father or guardian) served upon or left at the dwelling-house of the father or guardian, if any, of such infant, unless the Court or Judge at the time of hearing such application shall dispense with such last-mentioned service. O. 13, r. 1, (E).

<sup>54</sup>  
Default of  
appearance  
generally.  
[Cf. R. 574, (O)].

Default of  
appearance in  
actions not  
otherwise pro-  
vided for.

**2.** Where any defendant fails to appear to a writ of summons, and the plaintiff is desirous of proceeding upon default of appearance under any of the following Rules of this Order, or under Order XV., Rule 1, he shall, before taking such proceeding upon default, file an affidavit of service, or of notice in lieu of service, as the case may be. In all actions not by the rules of this Order otherwise specially provided for, if the defendant does not appear within the time limited for appearance, upon the filing by the plaintiff of a proper affidavit of service, and if the writ is not specially indorsed under O. 2, r. 5, of a statement of claim, the action may proceed as if such party had appeared, subject, as to actions where an account is claimed, to Order XV. O. 13, r. 2, (E); O. 13, r. 12, (E).

<sup>55</sup>  
Default of  
appearance  
where liqui-  
dated demand  
indorsed.  
[Cf. R. 575, (O)].

**3.** Where the writ of summons is indorsed for a liquidated demand, whether specially or otherwise, and the defendant fails, or all the defendants, if more than one, fail, to appear thereto, the plaintiff may enter final judgment for any sum not exceeding the sum indorsed on the writ, together with interest at the rate specified (if any), or (if no rate be specified) at the rate of five per cent. per annum, to the date of the judgment, and costs. O. 13, r. 3, (E).

<sup>56</sup>  
Default of  
appearance  
where liqui-  
dated demand  
and several  
defendants.  
[Cf. RR. 575,  
576, (O)].

**4.** Where the writ of summons is indorsed for a liquidated demand, whether specially or otherwise, and there are several defendants, of whom one or more appear to the writ, and another or others of them fail to appear, the plaintiff may enter final judgment, as in the preceding rule, against such as have not appeared, and may issue execution upon such judgment without prejudice to his right to proceed with the action against such as have appeared. O. 13, r. 4, (E).

<sup>57</sup>  
Default of  
appearance  
where claim  
for pecuniary  
damages, etc.  
[Cf. R. 578, (O)].

**5.** Where the writ is indorsed with a claim for pecuniary damages only, or for detention of goods with or without a claim for pecuniary damages, and the defendant fails, or all the defendants, if more than one, fail to appear, the plaintiff may enter interlocutory judgment, and a writ of enquiry shall issue to assess the value of the goods and the damages, or the damages only, as the case may be, in respect of the causes of action disclosed by the indorsement on the writ of

summons. But the Court or a Judge may order a statement of claim or particulars to be filed before any assessment of damages, and may order that, instead of a writ of enquiry, the value and amount of damages, or either of them, shall be ascertained in any way which the Court or Judge may direct. O. 13, r. 5, (E).

**§. XIII.**  
**rr. 6-9.**

6. Where the writ is indorsed as in the last preceding rule mentioned, and there are several defendants, of whom one or more appear to the writ, and another or others of them fail to appear, the plaintiff may sign interlocutory judgment against the defendant or defendants so failing to appear, and the value of the goods and the damages, or either of them, as the case may be, may be assessed, as against the defendant or defendants suffering judgment by default, at the same time as the trial of the action or issue therein against the other defendant or defendants, unless the Court or a Judge shall otherwise direct: provided that the Court or a Judge may order that instead of a writ of enquiry or trial, the value and amount of damages, or either of them, shall be ascertained in any way which the Court or Judge may direct. O. 13, r. 6, (E).

<sup>58</sup>  
Default of appearance where claim for pecuniary damages, etc., and several defendants. [Cf. R.R. 577, 579, (O)].

7. Where the writ is indorsed with a claim for pecuniary damages only, or for detention of goods with or without a claim for pecuniary damages, and is further indorsed for a liquidated demand, whether specially or otherwise, and any defendant fails to appear to the writ, the plaintiff may enter final judgment for the debt or liquidated demand, interest and costs against the defendant or defendants failing to appear, and interlocutory judgment for the value of the goods and the damages, or the damages only, as the case may be and proceed as mentioned in such of the preceding rules of this Order as may be applicable. O. 13, r. 7, (E).

<sup>59</sup>  
Default of appearance by any defendant where claim to pecuniary damages, etc., and liquidated demand. [Cf. R. 577, (O)].

8. In case no appearance shall be entered in an action for the recovery of land, within the time limited by the writ for appearance, or if an appearance be entered but the defence be limited to part only, the plaintiff shall be at liberty to enter a judgment that the person whose title is asserted in the writ shall recover possession of the land, or of the part thereof to which the defence does not apply. O. 13, r. 8, (E).

<sup>60</sup>  
Default of appearance in action to recover land. [Cf. R.R. 582, 585, (O)].

9. Where the plaintiff has indorsed a claim for mesne profits, arrears of rent, double value, or damages for breach

<sup>61</sup>  
Mesne profits, etc., in action to recover land. [Cf. R. 583, (O)].



**Order XIII.**  
**rr. 10-13.**

of contract or wrong or injury to the premises claimed upon a writ for the recovery of land, he may enter judgment as in the last preceding rule mentioned for the land; and may proceed as in the other preceding rules of this Order mentioned as to such other claim so indorsed. O. 13, r. 9, (E).

<sup>62</sup>  
Setting aside  
judgment.  
[Cf. R. 630, (O)].

**10.** Where judgment is entered pursuant to any of the preceding rules of this Order, it shall be lawful for the Court or a Judge to set aside or vary such judgment upon such terms as may be just. O. 13, r. 10, (E).

<sup>63</sup>  
Default of  
appearance to  
originating  
summons.

**11.** Where a defendant or respondent to an originating summons to which an appearance is required to be entered fails to appear within the time limited, the plaintiff or applicant may apply to the Court or a Judge for an appointment for the hearing of such summons, and upon a certificate that no appearance has been entered, the Court or Judge shall appoint a time for the hearing of such summons, upon such conditions (if any) as they or he shall think fit. O. 13, r. 15, (E).

<sup>64</sup>  
Default of  
appearance in  
mortgage  
action.

**12.** In an action for foreclosure of mortgage, or for foreclosure and sale of mortgaged premises, or for redemption, where the writ of summons has been indorsed as provided by Order II., and the defendant fails to appear within the time limited, the Court or a Judge may, at the expiration of ten days after the time for filing and entering an appearance has expired, on proof by affidavit of the service of the writ of summons, or notice in lieu of writ of summons, as the case may be; that the defendant has not appeared; that the allegations in the indorsement of claim are true; and on proof of such other facts as the Court or Judge shall deem requisite, and on production of the certificate of the proper officer of the filing of the affidavit of service of the writ of summons, or of notice in lieu of service, as the case may be, at least ten days prior to the day of motion, order judgment for the plaintiff, and for such purpose may make all proper orders and directions.

<sup>65</sup>  
Claim on bond.  
[Cf. R. 380, (O)].

**13.** Where the writ is indorsed with a claim on a bond within Imperial Act 8 and 9 Will. III., c. 11, and the defendant fails to appear thereto, no statement of claim shall be delivered, and the plaintiff may at once suggest breaches by delivering a suggestion thereof to the defendant or his solicitor, and proceed as mentioned in the said statute and in Imperial Act 3 and 4 Will. IV., c. 42, s. 16. O. 13, r. 14, (E).

ORDER XIV.

O. XIV.  
rr. 1, 2.

LEAVE TO SIGN JUDGMENT AND DEFEND WHERE WRIT  
IS SPECIALLY INDORSED.

1. (a)—Where the defendant appears to a writ of sum-<sup>86</sup>mons specially indorsed under Order II., Rule 5 Judgment on writ specially indorsed. under O. 2, r. 5. [Cf. R. 603. (O)]. the plaintiff may, on affidavit made by himself or by any other person who can swear positively to the facts, verifying the cause of action, and the amount claimed (if any), and stating that in his belief there is no defence to the action, apply to a Judge for liberty to enter final judgment for the amount so indorsed, together with interest, if any, or for recovery of the land (with or without rent or mesne profits), as the case may be, and costs. The Judge may thereupon, unless the defendant by affidavit, by his own *viva voce* evidence, or otherwise shall satisfy him that he has a good defence to the action on the merits, or disclose such facts as may be deemed sufficient to entitle him to defend, make an order empowering the plaintiff to enter judgment accordingly.

(b) If on the hearing of any application under this Rule it shall appear that any claim which could not have been specially indorsed under Order II., Rule 5, has been included in the indorsement on the writ, the Judge may, if he shall think fit, forthwith amend the indorsement by striking out such claim, or may deal with the claim specially indorsed as if no other claim had been included in the indorsement, and allow the action to proceed as respects the residue of the claim. O. 14, r. 1, (E).

2. The application by the plaintiff for leave to enter final<sup>87</sup> judgment under Rule 1 shall be made by summons returnable Application by summons. not less than four clear days after service accompanied by a copy of the affidavit and exhibits referred to therein. O. 14 r. 2, (E).

**O. XIV,  
rr. 3-4.**

<sup>68</sup>  
Cause shown  
by affidavit.

3. (a) The defendant may show cause against such application by affidavit, or (except in actions for the recovery of land) by offering to bring into Court the sum indorsed on the writ, or the Judge may allow the defendant to be examined upon oath.

(b) The affidavit shall state whether the defence alleged goes to the whole or to part only, and (if so) to what part of the plaintiff's claim.

(c) The Judge may, if he thinks fit, order the defendant, or in the case of a corporation, any officer thereof, to attend and be examined upon oath, or to produce any leases, deeds, books, or documents, or copies of or extracts therefrom. O. 14, r. 3, (E).

<sup>69</sup>  
Judgment for  
part of claim.  
[Cf. R. 604, (O)].

4. If it appear that the defence set up by the defendant applies only to a part of the plaintiff's claim, or that any part of his claim is admitted, the plaintiff shall have judgment forthwith for such part of his claim as the defence does not apply to or as is admitted, subject to such terms, if any, as to suspending execution, or the payment of the amount levied or any part thereof into Court by the Sheriff, the taxation of costs, or otherwise, as the Judge may think fit. And the defendant may be allowed to defend as to the residue of the plaintiff's claim. O. 14, r. 4, (E).

<sup>70</sup>  
Judgment  
against one  
defendant.  
[Cf. R. 605, (O)].

5. If it appears to the Judge that any defendant has a good defence to or ought to be permitted to defend the action, and that any other defendant has not such defence and ought not to be permitted to defend, the former may be permitted to defend, and the plaintiff shall be entitled to enter final judgment against the latter, and may issue execution upon such judgment without prejudice to his right to proceed with his action against the former. O. 14, r. 5, (E).

<sup>71</sup>  
Leave to  
defend.  
[Cf. R. 606, (O)].

6. Leave to defend may be given unconditionally, or subject to such terms as to giving security or time or mode of trial or otherwise as the Judge may think fit. O. 14, r. 6, (E).

<sup>72</sup>  
Summary  
disposal.

7. The Judge may with the consent of all parties dispose of the action finally and without appeal in a summary manner. O. 14, r. 7, (E).

8. Where leave, whether conditional or unconditional, is given to defend, the Judge shall have power to give all such directions as to the further conduct of the action as might be given on a summons for directions, and may order the action to be forthwith set down for trial. O. 14, r. 8 (a), (E).

O. XIV.  
rr. 8-10.  
73  
Directions by  
Judge.

9. (a) The costs of and incident to all applications under this Order shall be dealt with by the Judge on the hearing of the application, who shall order by and to whom, and when the same shall be paid, or may refer them to the Judge at the trial. Provided that in case no trial afterwards takes place, or no order as to costs is made, the costs are to be costs in the cause.

Costs. 74

(b) If the plaintiff makes an application under this Order where the case is not within the Order, or where the plaintiff, in the opinion of the Judge, knew that the defendant relied on a contention which would entitle him to unconditional leave to defend, in any of such cases the application shall be dismissed with costs to be paid forthwith by the plaintiff. O. 14, r. 9, (E).

10. A tenant shall have the same right to relief after a judgment under this Order for recovery of land on the ground of forfeiture for non-payment of rent as if the judgment had been given after trial. O. 14, r. 10, (E).

75  
Relief from  
forfeiture.

## ORDER XV.

O. XV,  
r. I.

## APPLICATION FOR AN ACCOUNT.

1. Where a writ of summons has been indorsed for an account, under Order II., Rule 7, or where the indorsement on a writ of summons involves taking an account, if the defendant either fails to appear, or does not after appearance, by affidavit or otherwise, satisfy the Court or a Judge that there is some preliminary question to be tried, an order for the proper accounts, with all necessary inquiries and directions, shall be forthwith made. O. 15, r. 1, (E).

76  
Order for  
account.  
[Cf. R. 645, (O)].

**O. XV,  
r. 2.**  
77  
Application  
for order for  
account.

**2.** An application for such order as mentioned in the last preceding rule shall be made by summons, and be supported by an affidavit, when necessary, filed on behalf of the plaintiff, stating concisely the grounds of his claim to an account. The application may be made at any time after the time for entering an appearance has expired. O. 15, r. 2, (E).

**O. XVI,  
rr. 1-3.**

## ORDER XVI.

### PARTIES.

#### 1.—*Generally.*

78  
Persons claim-  
ing jointly,  
severally, or  
in the alterna-  
tive, may be  
plaintiffs.  
[Cf. RR. 185,  
1131, (O)].

**1.** All persons may be joined in one action as plaintiffs, in whom any right to relief in respect of, or arising out of the same transaction, or series of transactions, is alleged to exist, whether jointly, severally, or in the alternative, where if such persons brought separate actions any common question of law or fact would arise; provided that, if upon the application of any defendant it shall appear that such joinder may embarrass or delay the trial of the action, the Court or a Judge may order separate trials, or make such other order as may be expedient, and judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to, without any amendment. But the defendant, though unsuccessful, shall be entitled to his costs occasioned by so joining any person who shall not be found entitled to relief unless the Court or a Judge in disposing of the costs shall otherwise direct. O. 16, r. 1, (E).

79  
Action in  
name of wrong  
plaintiff.  
[Cf. R. 313, (O)].

**2.** Where an action has been commenced in the name of the wrong person as plaintiff, or where it is doubtful whether it has been commenced in the name of the right plaintiff, the Court or a Judge may, if satisfied that it has been so commenced through a *bona fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as may be just. O. 16, r. 2, (E).

80  
Misjoinder of  
plaintiffs  
where Coun-  
terclaim.

**3.** Where in an action any person has been improperly or unnecessarily joined as a co-plaintiff, and a defendant has set up a counterclaim or set-off, he may obtain the benefit thereof by establishing his set-off or counterclaim as against the

parties other than the co-plaintiff so joined, notwithstanding the misjoinder of such plaintiff or any proceeding consequent thereon. O. 16, r. 3, (E).

O. XVI.  
RT. 4-8.

4. All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative. And judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment. O. 16, r. 4, (E).

<sup>81</sup>  
Who may be  
joined as  
defendants.  
[Cf. R. 186, (O)].

5. It shall not be necessary that every defendant shall be interested as to all the relief prayed for, or as to every cause of action included in any proceeding against him; but the Court or a Judge may make such order as may appear just to prevent any defendant from being embarrassed or put to expense by being required to attend any proceedings in which he may have no interest. O. 16, r. 5, (E).

<sup>82</sup>  
Defendant  
need not be  
interested in  
all the relief  
claimed.  
[R. 187, (O)].

6. The plaintiff may, at his option, join as parties to the same action all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange and promissory notes. O. 16, r. 6, (E).

<sup>83</sup>  
All or any  
parties liable  
on contract  
may be joined  
[R. 188, (O)].

7. Where the plaintiff is in doubt as to the person from whom he is entitled to redress, he may, in such manner as hereinafter mentioned, or as may be prescribed by any special order, join two or more defendants, to the intent that the question as to which, if any, of the defendants is liable, and to what extent, may be determined as between all parties. O. 16, r. 7, (E).

<sup>84</sup>  
Plaintiff in  
doubt as to  
person from  
whom redress  
to be sought  
[Cf. R. 192, (O)].

8. Trustees, executors, and administrators may sue and be sued on behalf of or as representing the property or estate of which they are trustees or representatives, without joining any of the persons beneficially interested in the trust or estate, and shall be considered as representing such persons; but the Court or a Judge may, at any stage of the proceedings, order any of such persons to be made parties, either in addition to or in lieu of the previously existing parties. This rule shall apply to trustees, executors, and administrators, sued in proceedings to enforce a security by foreclosure or otherwise. O. 16, r. 8, (E).

<sup>85</sup>  
Trustees, etc.,  
may be sued  
as represent-  
ing estate.  
[Cf. R. 193, (O)].

**O. XVI.  
rr. 9-11.**

<sup>86</sup>  
Where parties  
are numerous.  
[Cf. R. 200, (O)].

**9.** Where there are numerous persons having the same interest in one cause or matter, one or more of such persons may sue or be sued, or may be authorized by the Court or a Judge to defend in such cause or matter, on behalf or for the benefit of all persons so interested. O. 16, r. 9, (E).

<sup>87</sup>  
Approval of  
compromise in  
absence of  
some of  
persons  
interested.

**10.** Where in proceedings concerning a trust a compromise is proposed, and some of the persons interested in the compromise are not parties to the proceedings, but there are other persons in the same interest before the Court and assenting to the compromise, the Court or a Judge, if satisfied that the compromise will be for the benefit of the absent persons, and that to require service on such persons would cause unreasonable expense or delay, may approve the compromise and order that the same shall be binding on the absent persons, and they shall be bound accordingly, except where the order has been obtained by fraud or non-disclosure of material facts. O. 16, r. 9a., (E).

<sup>88</sup>  
Misjoinder  
and non-  
joinder.  
[Cf. R. 206, (O)].

**11.** No cause or matter shall be defeated by reason of the misjoinder or nonjoinder of parties, and the Court may in every cause or matter deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. The Court or a Judge may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court or a Judge to be just, order that the names of any parties improperly joined, whether as plaintiffs or as defendants, be struck out, and that the names of any parties, whether plaintiffs or defendants, who ought to have been joined, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter, be added. No person shall be added as a plaintiff suing without a next friend, or as the next friend of a plaintiff under any disability, without his own consent in writing thereto. Every party whose name is so added as defendant shall be served with a writ of summons or notice in manner hereinafter mentioned, or in such manner as may be prescribed by any special order, and the proceedings as against such party shall be deemed to have begun only on the service of such writ or notice. O. 16, r. 11, (E).

Adding and  
striking out  
parties.

Consent of  
plaintiff or  
next friend.

**12.** Any application to add or strike out or substitute a plaintiff or defendant may be made to the Court or a Judge at any time before trial by motion or summons, or at the trial of the action in a summary manner. O. 16, r. 12, (E).

<sup>88</sup>  
O. XVI.  
PT. II—II.  
Application to  
add or strike  
out.  
[R. 206 (5), (O)].

**13.** Where a defendant is added or substituted, the plaintiff shall, unless otherwise ordered by the Court or a Judge, issue an amended writ of summons, and serve such new defendant with such writ or notice in lieu of service thereof in the same manner as original defendants are served. O. 16, r. 13, (E), *am.*

<sup>86</sup>  
Amended  
writ where  
new defend-  
ant added.  
[Cf. R. 207, (O)].

## II.—Persons under Disability.

**14.** Infants may sue as plaintiffs by their next friends according to the practice of the Supreme Court in Equity at the time of the commencement of these Rules, and may, in like manner, defend by their guardians appointed for that purpose. Married women may sue and be sued as provided by *The Married Women's Property Act*, Chapter 78, C. S. 1903. O. 16, r. 16, (E), *am.*

<sup>91</sup>  
Actions by  
infants and  
married  
women.  
[Cf. R.R. 197,  
199, (O)].

**15.** Where lunatics and persons of unsound mind not so found by inquisition might respectively before the passing of the principal Act, have sued as plaintiffs or would have been liable to be sued as defendants in any action or suit, they may respectively sue as plaintiffs in any action by their committee or next friend according to the practice of the Supreme Court in Equity at the time of the commencement of these Rules, and may, in like manner, defend any action by their committees or guardians appointed for that purpose. O. 16, r. 17, (E), *am.*

<sup>92</sup>  
Lunatics and  
persons of  
unsound  
mind.  
[Cf. R. 217, (O)].

**16.** An infant shall not enter an appearance except by his guardian *ad litem*. No order for the appointment of such guardian shall be necessary, but the solicitor applying to enter such appearance, shall make and file an affidavit in the Form No. 2 in Appendix A., Part II., with such variations as circumstances may require. O. 16, r. 18, (E).

<sup>93</sup>  
Appearance  
by infant.

**17.** Every infant served with a petition or notice of motion, or summons in a matter, shall appear on the hearing thereof by a guardian *ad litem* in all cases in which the appointment of a special guardian is not provided for. No order for the

<sup>94</sup>  
Guardian *ad*  
*litem*.



**O. XVI,  
rr. 18-20.**

appointment of such guardian shall be necessary, but the solicitor by whom he appears shall previously make and file an affidavit as in the last Rule mentioned. O. 16, r. 18, (E).

<sup>95</sup>  
Consent of  
next friend.  
[Cf. R. 198, (O)].

**18.** Before the name of any person shall be used in any action as next friend of any infant, or other party, or as relator, such person shall sign a written authority to the solicitor for that purpose, and the authority shall be filed with the proper officer. O. 16, r. 20, (E), *am*; C. S. 1903, c. 112, s. 39.

<sup>96</sup>  
Consent as to  
procedure by  
person under  
disability.

**19.** In all causes or matters to which any infant or person of unsound mind, whether so found by inquisition or not, or person under any other disability, is a party, any consent as to the mode of taking evidence or as to any other procedure shall, if given with the consent of the Court or a Judge by the next friend, guardian, committee, or other person acting on behalf of the person under disability, have the same force and effect as if such party were under no disability and had given such consent. Provided that no such consent by any committee of a lunatic shall be valid as between him and the lunatic unless given with the sanction of the Court or a Judge. O. 16, r. 21, (E).

### III.—*Administration and Execution of Trusts.*

<sup>97</sup>  
Person  
appointed to  
represent a  
class.  
[Cf. R. 201, (O)].

**20.—(1)** In any case in which the right of an heir-at-law, or the next of kin or a class shall depend upon the construction which the Court or a Judge may put upon an instrument, and it shall not be known or shall be difficult to ascertain who is or are such heir-at-law, or next of kin or class, and the Court or Judge shall consider that in order to save expense or for some other reason it will be convenient to have the questions of construction determined before such heir-at-law, next of kin, or class shall have been ascertained by means of inquiry or otherwise, the Court or Judge may appoint some one or more persons to represent such heir-at-law, next of kin, or class, and the judgment of the Court or Judge in the presence of such persons shall be binding upon the heir-at-law, next of kin, or class so represented. O. 16, r. 32 (a), (E).

Power to  
appoint person  
to represent  
absent parties.

**(2)** In any other case in which an heir-at-law, or any next of kin or a class shall be interested in any proceedings, the Court or Judge may, if, having regard to the nature and extent of the

interest of such persons or any of them, it shall appear expedient, on account of the difficulty of ascertaining such persons, or in order to save expense, appoint one or more persons to represent such heir, or to represent all or any of such next of kin or class, and the judgment or order of the Court or Judge in the presence of the persons so appointed shall be binding upon the persons so represented. O. 16, r. 32 (b), (E).

**O. XVI.**  
**rr. 31-32.**

**21.** Any residuary legatee or next of kin entitled to a judgment or order for the administration of the personal estate of a deceased person, may have the same without serving the remaining residuary legatees or next of kin. O. 16, r. 33, (E); C. S. 1903, c. 112, s. 114, r. 1.

<sup>98</sup>  
Residuary  
legatee or  
next of kin.  
[R. 203 (1) (a),  
(O)].

**22.** Any legatee interested in a legacy charged upon real estate, and any person interested in the proceeds of real estate directed to be sold, and who may be entitled to a judgment or order for the administration of the estate of a deceased person, may have the same without serving any other legatee or person interested in the proceeds of the estate. O. 16, r. 34, (E); C. S. 1903, c. 112, s. 114, r. 2.

<sup>99</sup>  
Legatee  
interested in  
proceeds of  
realty.  
[R. 203 (1) (b),  
(O)].

**23.** Any residuary devisee or heir entitled to the like judgment or order, may have the same without serving any co-residuary devisee or co-heir. O. 16, r. 35, (E); C. S. 1903, c. 112, s. 114, r. 3.

<sup>100</sup>  
Residuary  
devisee or  
heir.  
[R. 203 (1) (c),  
(O)].

**24.** Any one of several *cestuis que trustent* under any deed or instrument entitled to a judgment or order for the execution of the trusts of the deed or instrument, may have the same without serving any other *cestui que trust*. O. 16, r. 36, (E); C. S. 1903, c. 112, s. 114, r. 4.

<sup>101</sup>  
*Cestuis que  
trustent.*  
[R. 203 (1) (d),  
(O)].

**25.** In all cases of actions for the prevention of waste or otherwise for the protection of property, one person may sue on behalf of himself and all persons having the same interest. O. 16, r. 37, (E); C. S. 1903, c. 112, s. 114, r. 5.

<sup>102</sup>  
Protection of  
property.  
[R. 203 (1) (e),  
(O)].

**26.** Any executor, administrator, or trustee entitled there-to may have a judgment or order against any one legatee, next of kin, or *cestui que trust* for the administration of the estate or the execution of the trusts. O. 16, r. 38, (E); C. S. 1903, c. 112, s. 114, r. 6.

<sup>103</sup>  
Executor,  
etc., for  
administra-  
tion of estate.  
[R. 203 (1) (f),  
(O)].

**O. XVI.  
rr. 27-30.**

**104**  
Conduct of  
action.  
[Cf. R. 203 (2),  
(O)].

**27.** The Court or a Judge may require any person to be made a party to any action or proceeding, and may give the conduct of the action or proceeding to such person as he may think fit, and may make such order in any particular case as he may think just for placing the defendant on the record on the same footing in regard to costs as other parties having a common interest with him in the matters in question. O. 16, r. 39, (E); C. S. 1903, c. 112, s. 114, r. 7, *am.*

**105**  
Notice of  
judgment to  
be served on  
certain  
persons.  
[Cf. R. 203 (3),  
(O)].

**28.** Wherever, in any action for the administration of the estate of a deceased person, or the execution of the trusts of any deed or instrument, or for the partition or sale of any hereditaments, a judgment or an order has been pronounced or made —

- (a) Under Order XV.;
- (b) Under Order XXXIII.;
- (c) Affecting the rights or interests of persons  
not parties to the action ;

the Court or a Judge may direct that any persons interested in the estate, or under the trust, or in the hereditaments, shall be served with notice of the judgment or order; and after such notice such persons shall be bound by the proceedings, in the same manner as if they had originally been made parties, and shall be at liberty to attend the proceedings under the judgment or order. Any person so served may, within one month after such service, apply to the Court or Judge to discharge, vary, or add to the judgment or order. O. 16, r. 40, (E). See C. S. 1903, c. 112, s. 114, r. 8.

**106**  
Order for  
liberty to  
attend not  
necessary.

**29.** It shall not be necessary for any person served with notice of any judgment or order, to obtain an order for liberty to attend the proceedings under such judgment or order, but such person shall be at liberty to attend the proceedings upon entering an appearance in the same manner, and subject to the same provisions, as a defendant entering an appearance.

**Memorandum  
of service.**

A memorandum of the service upon any person of notice of the judgment or order in any action under Rule 28, shall be entered with the Registrar upon due proof by affidavit of such service. O. 16, rr. 41, 42, (E).

**107**  
Form of  
memorandum.

**30.** Notice of a judgment or order served pursuant to Rule 28 shall be entitled in the action, and there shall be endorsed thereon a memorandum in the Form No. 22 in Appendix G. O. 16, r. 43, (E).

**31.** Notice of a judgment or order on an infant or person of unsound mind, not so found by inquisition, shall be served in the same manner as a writ of summons in an action. O. 16, r. 44, (E).

**O. XVI,  
rr. 31-34.**  
108  
Service of  
notice of  
judgment on  
infants, etc.,

**32.** In any cause or matter to execute the trusts of a will it shall not be necessary to make the heir-at-law a party, but the plaintiff shall be at liberty to make the heir-at-law a party where he desires to have the will established against him. O. 16, r. 45, (E).

109  
Heir-at-law  
not necessary  
party in suit  
to execute  
trust.

**33.**—(1) If in any cause, matter, or other proceeding it shall appear to the Court or a Judge that any deceased person who was interested in the matter in question has no legal personal representative, the Court or Judge may proceed in the absence of any person representing the estate of the deceased person, or may appoint some person to represent his estate for all the purposes of the cause, matter, or other proceeding on such notice to such persons (if any) as the Court or Judge shall think fit, either specially or generally by public advertisement, and the order so made, and any order consequent thereon, shall bind the estate of the deceased person in the same manner in every respect as if a duly constituted legal personal representative of the deceased had been a party to the cause, matter, or proceeding. O. 16, r. 46, (E); C. S. 1903, c. 112, s. 116.

110  
Where no  
personal  
representative  
Court may  
appoint a rep-  
resentative.  
(Cf. R. 194, (O)).

(2) Where probate of the will of a deceased person, or letters of administration to his estate have not been granted, and representation of such estate is required in any cause, matter or other proceeding, the Court or a Judge may appoint an administrator *ad litem*. See R. 195, (O).

**34.** In any cause or matter for the administration of the estate of a deceased person, no party other than the executor or administrator shall, unless by leave of the Court or a Judge be entitled to appear either in Court or in Chambers, or before a Referee, on the claim of any person not a party to the cause or matter against the estate of the deceased person in respect of any debt or liability. The Court or a Judge may direct or give liberty to any other party to the cause or matter to appear, either in addition to or in the place of the executor or administrator, upon such terms as to costs or otherwise as they or he shall think fit. O. 16, r. 47, (E), *am*

111  
Administra-  
tion.  
Appearance at  
Chambers,  
etc., in respect  
of creditors'  
claims.  
(Cf. R. 204, (O)).

O. XVI,  
rr. 35—37.

IV.—*Third Party Procedure.*

112  
Third party  
notice, where  
contribution  
or indemnity  
claimed.

**35.** Where a defendant claims to be entitled to contribution, or indemnity from or any other relief over against any person not a party to the action, he may, by leave of the Court or a Judge, issue a notice (hereinafter called the third-party notice) to that effect. A copy of such notice shall be filed with the proper officer and served on such person according to the rules relating to the service of writs of summons. The notice shall state the nature and grounds of the claim, and shall, unless otherwise ordered by the Court or a Judge be served within the time limited for delivering his defence. Such notice may be in the form or to the effect of the Form No. I. in Appendix B., with such variations as circumstances may require, and therewith shall be served a copy of the statement of claim, or if there be no statement of claim, then a copy of the writ of summons in the action. O. 16, r. 48, (E), *am.*; R. 209, (O).

113  
Appearance of  
third party.

**36.** If a person not a party to the action, who is served as mentioned in Rule 35 (hereafter called the third party), desires to dispute the plaintiff's claim in the action as against the defendant on whose behalf the notice has been given, or his own liability to the defendant, the third party must enter an appearance in the action within eight days from the service of the notice. In default of his so doing, he shall be deemed to admit the validity of the judgment obtained against such defendant, whether obtained by consent or otherwise, and his own liability to contribute or indemnify, or as may be, to the extent claimed in the third-party notice. Provided always, that a person so served and failing to appear within the said period of eight days may apply to the Court or a Judge for leave to appear, and such leave may be given upon such terms, if any, as the Court or Judge shall think fit. O. 16, r. 49, (E), *am.*; R. 210, (O).

Default of  
appearance.

Leave to  
appear.

114  
Judgment  
against third  
party on  
default of  
appearance.

**37.** Where a third party makes default in entering an appearance in the action, in case the defendant giving the notice suffer judgment by default, he shall be entitled at any time, after satisfaction of the judgment against himself, or before such satisfaction by leave of the Court or a Judge, to enter judgment against the third party to the extent of the contribution or indemnity or relief over-claimed in the third-

party notice ; provided that it shall be lawful for the Court or a Judge to set aside or vary such judgment upon such terms as may seem just. O. 16, r. 50, (E), *am.*; R. 211, (O). O. XVI,  
rr. 35-40.

**38.** Where a third party makes default in entering an appearance in the action, in case the action is tried and results in favor of the plaintiff, the Judge who tries the action may, at or after the trial, enter such judgment as the nature of the case may require for the defendant giving the notice against the third party: Provided that execution thereof be not issued without leave of the Judge until after satisfaction by such defendant of the verdict or judgment against him. And if the action is finally decided in the plaintiff's favor, otherwise than by trial, the Court or Judge may, on application by motion or summons, order such judgment as the nature of the case may require to be entered for the defendant giving the notice against the third party at any time after satisfaction by the defendant of the amount recovered by the plaintiff against him. O. 16, r. 51, (E). 115  
Judgment on  
trial on default  
of appearance  
of third party.  
[Cf. R. 212, (O)].

**39.** If a third party appears pursuant to the third-party notice, the defendant giving the notice may apply to the Court or a Judge for directions, and the Court or a Judge, upon the hearing of such application, may, if satisfied that there is a question proper to be tried as to the liability of the third party to make the contribution or indemnity claimed, in whole or in part, order the question of such liability, as between the third party and the defendant giving the notice, to be tried in such manner, at or after the trial of the action as the Court or Judge directs ; and if not so satisfied, may order such judgment as the nature of the case requires to be entered in favor of the defendant giving the notice against the third party. O. 16, r. 52, (E). 116  
Appearance  
by third party.  
Application  
for directions.  
[Cf. R. 213 (1),  
(O)].

**40.** The Court or a Judge, upon the hearing of the application mentioned in Rule 39, may, if it shall appear desirable to do so, give the third party liberty to defend the action, upon such terms as may be just, or to appear at the trial and take such part therein as may be just, and generally may order such proceedings to be taken, documents to be delivered, or amendments to be made, and give such directions as to the Court or Judge shall appear proper for having the 117  
Directions.  
[Cf. R. 213, (2),  
(O)].

O. XVI,  
rr. 41-43.

question most conveniently determined, and as to the mode and extent in, or to which the third party shall be bound or made liable by the judgment in the action. O. 16, r. 53, (E).

<sup>118</sup>  
Costs.  
[R. 214, (O)].

**41.** The Court or a Judge may decide all questions of costs, as between a third party and the other parties to the action, and may order any one or more to pay the costs of any other, or others, or give such directions as to costs as the justice of the case may require. O. 16, r. 54, (E).

<sup>119</sup>  
Claim to contribution,  
indemnity,  
etc., against a  
co-defendant.

**42.** Where a defendant claims to be entitled to contribution or indemnity from or relief over against any other defendant to the action, a notice may be issued and the same procedure shall be adopted, for the determination of such questions between the defendants, as would be issued and taken against such other defendant, if such last-mentioned defendant were a third party; but nothing herein contained shall prejudice the rights of the plaintiff against any defendant in the action. O. 16, r. 55, (E), *am.*; R. 215, (O).

<sup>120</sup>  
Plaintiff not to  
be delayed by  
questions  
between  
defendants.

**43.** A plaintiff is not to be prejudiced or unnecessarily delayed by reason of questions between the defendant and the third party in which he is not concerned; and the Court or Judge shall give such directions, on terms or otherwise, as may be necessary to prevent such delay of the plaintiff, where it can be done without injustice to the defendants. R. 216, (O).

O. XVII,  
rr. 1, 2.

## ORDER XVII.

### CHANGE OF PARTIES BY DEATH, ETC.

<sup>121</sup>  
Action not to  
abate where  
cause of  
action  
survives.  
[Cf. R. 394, (O)].

**1.** A cause or matter shall not become abated by reason of the marriage, death, or bankruptcy of any of the parties, if the cause of action survive or continue, and shall not become defective by the assignment, creation, or devolution of any estate or title *pendente lite*; and, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the verdict or finding of the issues of fact and the judgment, but judgment may in such case be entered, notwithstanding the death. O. 17, r. 1, (E).

**2.** In case of the marriage, death, or bankruptcy, or devolution of estate by operation of law, of any party to a

cause or matter, the Court or a Judge may, if it be deemed necessary for the complete settlement of all the questions involved, order that the husband, personal representative, trustee, or other successor in interest, if any, of such party be made a party, or be served with notice in such manner and form as hereinafter prescribed, and on such terms as the Court or Judge shall think just, and shall make such order for the disposal of the cause or matter as may be just. O. 17, r. 2, (E).

**O. XVII.  
rr. 3-5.**

**122**  
In case of marriage, etc., or devolution of estate, Court may order successor to be made a party or served with notice.

3. In case of an assignment, creation, or devolution of any estate or title *pendente lite*, the cause or matter may be continued by or against the person to or upon whom such estate or title has come or devolved. O. 17, r. 3, (E).

**123**  
Assignment *pendente lite*.  
[R. 385, (O)].

4. Where by reason of marriage, death, or bankruptcy, or any other event occurring after the commencement of a cause or matter, and causing a change or transmission of interest or liability, or by reason of any person interested coming into existence after the commencement of the cause or matter, it becomes necessary or desirable that any person not already a party should be made a party, or that any person already a party should be made a party in another capacity, an order that the proceedings shall be carried on between the continuing parties, and such new party or parties, may be obtained *ex parte* on application to the Court or a Judge, upon an allegation of such change, or transmission of interest or liability, or of such person interested having come into existence. O. 17, r. 4, (E).

**124**  
Order to add parties on change of interest.  
[R. 386, (O)].

5. An order obtained as in the last preceding rule mentioned shall, unless the Court or Judge shall otherwise direct, be served upon the continuing party or parties, or their solicitors, and also upon each such new party, unless the person making the application be himself the only new party, and the order shall from the time of such service, subject, nevertheless, to the next two following rules, be binding on the persons served therewith, and every person served therewith who is not already a party to the cause or matter shall be bound to enter an appearance thereto within the same time and in the same manner as if he had been served with a writ of summons. O. 17, r. 5, (E).

**125**  
Service of order to continue action.  
[R. 397, (O)].



O. XVII.  
R. 6-8.

126  
Application to  
discharge  
order.  
[R. 398, (O)].

6. Where any person who is under no disability or under no disability other than coverture, or being under any disability other than coverture, but having a guardian *ad litem* in the cause or matter, shall be served with such order as in Rule 4 mentioned, such person may apply to the Court or a Judge to discharge or vary such order at any time within twelve days from the service thereof. O. 17, r. 6, (E).

127  
Application to  
discharge  
order by  
person under  
disability.  
[R. 400, (O)].

7. Where any person being under any disability other than coverture, and not having a guardian *ad litem* in the cause or matter, is served with any order as in Rule 4 mentioned, such person may apply to the Court or a Judge to discharge or vary such order at any time within twelve days from the appointment of a guardian *ad litem* for such party, and until such period of twelve days shall have expired such order shall have no force or effect as against such last-mentioned person. O. 17, r. 7, (E).

128  
Death of sole  
plaintiff or  
defendant.  
[R. 403, (O)].

8. When the plaintiff or defendant in a cause or matter dies, and the cause of action survives, but the person entitled to proceed fails to proceed, the defendant (or the person against whom the cause or matter may be continued) may apply by summons to compel the plaintiff (or the person entitled to proceed) to proceed within such time as may be ordered; and in default of such proceeding, judgment may be entered for the defendant, or, as the case may be, for the person against whom the cause or matter might have been continued; and in such case, if the plaintiff has died, execution may issue as in the case provided for by Order XLI., Rule 20. O. 17, r. 8, (E).

O. XVIII,  
R. 1.

## ORDER XVIII.

## JOINDER OF CAUSES OF ACTION

129  
What causes  
of action may  
be joined.  
[Cf. RR. 232,  
237, (O)].

1. Subject to the following Rules of this Order, the plaintiff may unite in the same action several causes of action; but if it appear to the Court or a Judge that any such causes of action cannot be conveniently tried or disposed of together, the Court or Judge may order separate trials of any of such causes of action to be had, or may make such other order as may be necessary or expedient for the separate disposal thereof. O. 18, r. 1, (E).

2. No cause of action shall, unless by leave of the Court or a Judge, be joined with an action for the recovery of land, except claims in respect of mesne profits or arrears of rent or double value in respect of the premises claimed, or any part thereof, and damages for breach of any contract under which the same or any part thereof are held, or for any wrong or injury to the premises claimed.

**O. XVIII.**  
**RT. 2-6.**

**130**  
Recovery of land.

Provided that nothing in this Order contained shall prevent any plaintiff in an action for foreclosure or redemption from asking for or obtaining an order against the defendant for delivery of the possession of the mortgaged property to the plaintiff on or after the order absolute for foreclosure or redemption, as the case may be, and such an action for foreclosure or redemption and for such delivery of possession shall not be deemed an action for the recovery of land within the meaning of these rules.

Joinder of claim for possession in action for foreclosure or redemption.

Provided also, that in case any mortgage security shall be foreclosed by reason of the default to redeem by any plaintiff in a redemption action, the defendant in whose favor such foreclosure has taken place may by motion or summons apply to the Court or a Judge for an order for delivery to him of possession of the mortgaged property, and such order may be made thereupon as the justice of the case shall require. O. 18, r. 2, (E).

3. A claim by an assignee in insolvency or for the benefit of creditors, shall not, unless by leave of the Court or a Judge be joined with any claim by him in any other capacity. R. 233, (O); O. 18, r. 3, (E), *am.*

**131**  
Claim by assignee in insolvency.  
[R. 233, (O)].

4. Claims by or against husband and wife may be joined with claims by or against either of them separately. O. 18, r. 4, (E).

**132**  
Claims by or against husband and wife.  
[R. 234, (O)].

5. Claims by or against an executor or administrator as such may be joined with claims by or against him personally, provided the last-mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor or administrator. O. 18, r. 5, (E).

**133**  
Claims by or against executor.  
[R. 235, (O)].

6. Claims by plaintiffs jointly may be joined with claims by them or any of them separately against the same defendant. O. 18, r. 6, (E).

**134**  
Joint and several claims.  
[R. 236, (O)].

**O. XVIII,  
rr. 7-9.**136  
Rules 1, 8, 9.136  
Remedy for  
misjoinder.

7. The last three preceding Rules shall be subject to Rules 1, 8 and 9 of this Order. O. 18, r. 7, (E).

8. Any defendant alleging that the plaintiff has united in the same action several causes of action which cannot be conveniently disposed of together, may at any time apply to the Court or a Judge for an order confining the action to such of the causes of action as may be conveniently disposed of together. O. 18, r. 8, (E).

137  
Order for  
exclusion.  
[Cf. R. 237, (O)].

9. If, on the hearing of such application as in the last preceding Rule mentioned, it shall appear to the Court or a Judge that the causes of action are such as cannot all be conveniently disposed of together, the Court or Judge may order any of such causes of action to be excluded, and consequential amendments to be made, and may make such order as to costs as may be just. O. 18, r. 9, (E).

**O. XVIIIa.,  
rr. 1-3.****ORDER XVIIIa.****TRIAL WITHOUT PLEADINGS.**

A plaintiff may without pleadings proceed to trial, subject to the following rules:—

138  
Indorsement.

1. The indorsement of the writ of summons shall contain a statement sufficient to give notice of the nature of his claim or of the relief or remedy required in the action, and shall state that if the defendant appears, the plaintiff intends to proceed to trial without pleadings. O. 18a., r. 1, (E).

139  
Notice of trial.

2. Within ten days after appearance the plaintiff shall serve twenty-one days' notice of trial without pleadings. Such notice shall be in form No. 17 (a), Appendix B, with such variations as circumstances may require. O. 18a., r. 2, (E).

140  
Application  
by defendant  
for statement  
of claim.

3. The defendant may within ten days after appearance apply by summons for the delivery of a statement of claim, and on such summons the Judge may order (1) that a statement of claim shall be delivered, in which case the action shall proceed in the usual manner; or (2) that the action shall proceed to trial without pleadings, in which case it may be further ordered, if the Judge thinks fit, that either party shall deliver particulars of his claim or defence. O. 18a., r. 3, (E).

4. When the Judge orders that the action shall proceed to trial without pleadings, and makes no order as to particulars, all defences shall be open at the trial to the defendant. Where particulars are ordered to be delivered, the parties shall be bound by such particulars, so far as regards the matters in respect to which the order for particulars was made. O. 18a., r. 4, (E).

O. XVIIIa.,  
rr. 4-6.  
141  
Particulars.

5. Where a defendant has not taken out a summons under Rule 3 of this Order, he shall not be allowed to rely on a set-off or counterclaim, or on the defence of infancy, coverture, fraud, or Statute of Limitations, unless he has given (within ten days after appearance) notice to the plaintiff, stating the grounds and particulars upon which he relies. O. 18a., r. 5, (E), *am.*

142  
Special  
defences.

6. When a plaintiff indorses the writ of summons with a statement that, if the defendant appears, he intends to proceed to trial without pleadings, no pleadings shall be required or delivered, except by order of the Judge made under Rule 3 of this Order. O. 18a., r. 6, (E).

143  
Order for  
pleadings.

## ORDER XIX.

O. XIX,  
r. 1.

### PLEADING GENERALLY.

1. The plaintiff shall, subject to the provisions of Order XX., and at such time and in such manner as therein prescribed, deliver to the defendant a statement of his claim, and of the relief or remedy to which he claims to be entitled. The defendant shall, subject to the provisions of Order XXI., and at such time and in such manner as therein prescribed, deliver to the plaintiff his defence, set-off, or counterclaim (if any), and the plaintiff shall, subject to the provisions of Order XXIII., and at such time and in such manner as therein prescribed, deliver his reply (if any) to such defence, set-off, or counterclaim. Such statements shall be as brief as the nature of the case will admit, and the proper officer in taxing and adjusting the costs of the action shall, at the instance of any party, or may, without any request, inquire into any unnecessary prolixity, and order the costs occasioned by such prolixity to be borne by the party chargeable with the same. O. 19, r. 2, (E).

144  
Delivery of  
pleadings.

Costs of  
prolixity.

<sup>145</sup>  
 O. XIX,  
 rr. 2-5.  
 Set-off and  
 counterclaim.  
 [Cf. RR. 251,  
 252, (O)].

2. A defendant in an action may set off, or set up by way of counterclaim against the claims of the plaintiff, any right or claim, whether such set-off or counterclaim sound in damages or not, and such set-off or counterclaim shall have the same effect as a cross-action, so as to enable the Court to pronounce a final judgment in the same action, both on the original and on the cross-claim. But the Court or a Judge may, on the application of the plaintiff before trial, if in the opinion of the Court or Judge such set-off or counterclaim cannot be conveniently disposed of in the pending action, or ought not to be allowed, refuse permission to the defendant to avail himself thereof. O. 19, r. 3, (E).

<sup>146</sup>  
 Pleadings to  
 state material  
 facts, and not  
 evidence.  
 [Cf. R. 263, (O)].

3. Every pleading shall contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved, and shall, when necessary, be divided into paragraphs numbered consecutively. Dates, sums, and numbers shall be expressed in figures, and not in words. Signature of counsel shall not be necessary; but where pleadings have been settled by counsel they shall be signed by him; and if not so settled they shall be signed by the solicitor, or by the party, if he sues or defends in person. O. 19, r. 4, (E).

<sup>147</sup>  
 Forms.

4. The Forms in Appendices C., D., and E., when applicable, and where they are not applicable, forms of the like character, as near as may be, shall be used for all pleadings, and where such forms are applicable and sufficient any longer forms shall be deemed prolix, and the costs occasioned by such prolixity shall be disallowed to or borne by the party so using the same, as the case may be. O. 19, r. 5, (E).

<sup>148</sup>  
 Particulars to  
 be given  
 where  
 necessary.

5. In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading; provided that, if the particulars be of debt, expenses, or damages, and exceed three folios, the fact must be so stated, with a reference to full particulars already delivered or to be delivered with the pleading. O. 19, r. 6, (E).

6. A further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any pleading, notice, or written proceeding requiring particulars, may in all cases be ordered, upon such terms, as to costs and otherwise, as may be just. O. 19, r. 7, (E).

O. XIX.  
rr. 6-11.

149  
Further and better particulars, etc.  
[R. 299, (O)].

7. The party at whose instance particulars have been delivered under a Judge's order shall, unless the order otherwise provides, have the same length of time for pleading after the delivery of the particulars that he had at the return of the summons. Save as in this rule provided, an order for particulars shall not, unless the order otherwise provides, operate as a stay of proceedings, or give any extension of time. O. 19, r. 8, (E).

150  
When order for particulars a stay.

8. Every pleading may be either written or printed, or partly written and partly printed. O. 19, r. 9, (E), *am.*

151  
Written or printed pleadings.  
[R. 255, (O)].

9. Every pleading or other document required to be delivered to a party, or between parties, shall be delivered in the manner now in use to the solicitor of every party who appears by a solicitor, or to the party if he does not appear by a solicitor, but if no appearance has been entered for any party, then such pleading or document shall be delivered by being filed with the proper officer. O. 19, r. 10, (E).

152  
Delivery of pleadings.  
[Cf. R. 268, (O)].

10. Nothing in these rules contained shall affect the right of any defendant to plead Not Guilty by statute. And every defence of Not Guilty by statute shall have the same effect as a plea of Not Guilty by statute has heretofore had. Where a defendant pleads Not Guilty by statute, he shall insert in the margin of the paragraph containing the plea, the words "By Statute," with the year of the reign in which the Act of Parliament upon which he relies was passed, and the Chapter and section of the Act, otherwise the plea shall be taken not to have been pleaded by virtue of an Act of Parliament. O. 19, r. 12, (E), *am.*

153  
Plea of "Not Guilty by statute."  
[Cf. R.R. 286, 287, (O)].

11. Every allegation of fact in any pleading, not being a petition or summons, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the opposite party, shall be taken to be admitted, except as against an infant, lunatic, or person of unsound mind not so found by inquisition. O. 19, r. 13, (E).

154  
Specific denial.  
[Cf. R. 272, (O)].

○. XIX,  
rr. 12-17.  
155  
Condition  
precedent.

**12.** Any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the plaintiff or defendant (as the case may be); and subject thereto an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or defendant shall be implied in his pleading. O. 19, r. 14, (E).

156  
Pleadings to  
raise all  
grounds of  
defence or  
reply.  
[R. 271, (O)].

**13.** The defendant or plaintiff (as the case may be) must raise by his pleading all matters which show the action or counterclaim not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence or reply, as the case may be, as if not raised would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the preceding pleadings, as, for instance, fraud, Statute of Limitations, release, payment, performance, facts showing illegality either by statute or common law, or Statute of Frauds. O. 19, r. 15, (E).

157  
Departure.  
[R. 288, (O)].

**14.** No pleading, not being a petition or summons, shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same. O. 19, r. 16, (E).

158  
Denial to be  
specific.

**15.** It shall not be sufficient for a defendant in his statement of defence to deny generally the grounds alleged by the statement of claim, or for a plaintiff in his reply to deny generally the grounds alleged in a defence by way of counterclaim, but each party must deal specifically with each allegation of fact of which he does not admit the truth, except damages. O. 19, r. 17, (E).

159  
Joinder of  
issue.

**16.** Subject to the last preceding rule, the plaintiff by his reply may join issue upon the defence, and each party in his pleading (if any), subsequent to reply, may join issue upon the previous pleading. Such joinder of issue shall operate as a denial of every material allegation of fact in the pleading upon which issue is joined, but it may except any facts which the party may be willing to admit, and shall then operate as a denial of the facts not so admitted. O. 19, r. 18, (E).

160  
Evasive  
denial.

**17.** When a party in any pleading denies an allegation of fact in the previous pleading of the opposite party, he must not do so evasively, but answer the point of substance.

Thus, if it be alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And if an allegation is made with divers circumstances, it shall not be sufficient to deny it along with those circumstances. O. 19, r. 19, (E).

**O. XIX,  
rr. 18-19.**

**18.** When a contract, promise, or agreement is alleged in any pleading, a bare denial of the same by the opposite party shall be construed only as a denial in fact of the express contract, promise, or agreement alleged, or of the matters of fact from which the same may be implied by law, and not as a denial of the legality or sufficiency in law of such contract, promise or agreement, whether with reference to the Statute of Frauds or otherwise. O. 19, r. 20, (E).

<sup>161</sup>  
Denial of  
contract.  
[Cf. R. 282, (O)].

**19.** Wherever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof, unless the precise words of the document or any part thereof are material. O. 19, r. 21, (E).

<sup>162</sup>  
Effect of  
documents to  
be stated.  
[Cf. R. 275, (O)].

**20.** Wherever it is material to allege malice, fraudulent intention, knowledge, or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred. O. 19, r. 22, (E).

<sup>163</sup>  
Allegation of  
malice, etc.  
[Cf. R. 276, (O)].

**21.** Wherever it is material to allege notice to any person of any fact, matter, or thing, it shall be sufficient to allege such notice as a fact, unless the form or the precise terms of such notice, or the circumstances from which such notice is to be inferred, be material. O. 19, r. 23, (E).

<sup>164</sup>  
Allegation of  
notice.  
[Cf. R. 277, (O)].

**22.** Whenever any contract or any relation between any persons is to be implied from a series of letters or conversations, or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letters, conversations, or circumstances without setting them out in detail. And, if in such case, the person so pleading desires to rely in the alternative upon more contracts or relations than one, as to be implied from such circumstances, he may state the same in the alternative. O. 19, r. 24, (E).

<sup>165</sup>  
Implied  
contract or  
relation.  
[Cf. R. 278, (O)].



**O. XIX,  
rr. 23-28.**  
166  
Facts  
presumed  
need not be  
stated.  
[R. 279, (O)].

**23.** Neither party need in any pleading allege any matter of fact which the law presumes in his favor, or as to which the burden of proof lies upon the other side, unless the same has first been specifically denied (*e. g.*, consideration for a bill of exchange where the plaintiff sues only on the bill, and not for the consideration as a substantive ground of claim). O. 19, r. 25, (E).

167  
Denial of  
representative  
capacity.  
[Cf. R. 280, (O)].

**24.** If either party wishes to deny the right of any other party to claim as executor, or as trustee whether in bankruptcy or insolvency or otherwise, or in any representative or other alleged capacity, or the alleged constitution of any partnership firm, he shall deny the same specifically. O. 21, r. 5, (E), *am.*

169  
Incorporation.

**25.** Unless the incorporation of a corporate party is specifically denied, it shall not be necessary to prove it. R. 281, (O).

170  
Technical  
objection.  
[Cf. R. 309, (O)].

**26.** No technical objection shall be raised to any pleading on the ground of any alleged want of form. O. 19, r. 26, (E).

171  
Striking out  
pleadings.  
[Cf. R. 298, (O)].

**27.** The Court or a Judge may at any stage of the proceedings order to be struck out or amended any matter in any indorsement or pleading which may be unnecessary or scandalous, or which may tend to prejudice, embarrass, or delay the fair trial of the action; and may in any such case, if they or he shall think fit, order the costs of the application to be paid as between solicitor and client. O. 19, r. 27, (E).

172  
Delivery  
includes filing.

**28.** Delivering a statement of claim or defence, or other pleading, document or proceeding, when mentioned or referred to in these Orders, includes filing, where under the practice of the Supreme Court or Supreme Court in Equity at the commencement of these Rules, or otherwise, or under these Orders, statements, pleadings, documents or proceedings of a like kind ought to be filed. See R. 267, (O).

**O. XX,  
r. 1.**

## ORDER XX.

### STATEMENT OF CLAIM.

173  
Statement of  
claim.  
[Cf. R.R. 243,  
245, (O)].

**1.** The delivery of statements of claim shall be regulated as follows:

- (a) Where the writ is specially indorsed under Order II., rule 5, no further statement of claim shall be delivered, but the indorsement on the writ shall be deemed to be the statement of claim;

- (b) Subject to the provisions of Order XI., rule 6, as to delivering a statement of claim, and Order XIII., rule 2, as to filing a statement of claim, no statement of claim need be delivered unless the defendant, at the time of entering appearance, or within eight days thereafter, gives notice in writing to the plaintiff or his solicitor that he requires a statement of claim to be delivered, or unless the same be ordered under Order XXX. or Order XVIIa., r. 3. O. XX.  
rr. 2, 3.  
[Cf. R. 243a.,  
(O)].
- (c) If no statement of claim has been delivered, and the defendant gives notice requiring the delivery of a statement of claim, the plaintiff shall, unless otherwise ordered by the Court or a Judge, deliver it within twenty-one days from the time of the plaintiff receiving such notice; [Cf. R. 245 (3),  
(O)].
- (d) The plaintiff may, except as in (d) mentioned, deliver a statement of claim, either with the writ of summons or notice in lieu of writ of summons, or at any time afterwards, either before or after appearance, notwithstanding that the defendant may have appeared and not required the delivery of a statement of claim; provided that in no case where a defendant has appeared shall a statement be delivered more than thirty days after the appearance has been entered, unless otherwise ordered by the Court or a Judge. [R. 243b., (O)].
- (e) Where the plaintiff delivers a statement of claim without being required to do so, or the defendant unnecessarily requires such a statement, the Court or a Judge may make such order as to the costs occasioned thereby as shall be just, if it appears that the delivery of a statement of claim was unnecessary or improper. (O. 20, r. 1, (E), *am.*;<sup>174</sup> but without amendment in R. S. C., July 1902, r. 3).
- 2.** Whenever a statement of claim is delivered the plaintiff may therein alter, modify, or extend his claim without any amendment of the indorsement of the writ. O. 20, r. 4, (E). <sup>174</sup>  
Claim differ-  
ing from  
indorsement.  
[R. 244, (O)].
- 3.** Every statement of claim shall state specifically the relief which the plaintiff claims, either simply or in the alternative, and it shall not be necessary to ask for general or other relief, which may always be given, as the Court or a <sup>175</sup>  
Claim of relief.  
[Cf. R. 273, (O)].

**O. XX.  
rr. 4, 5.**

Judge may think just, to the same extent as if it had been asked for. And the same rule shall apply to any counterclaim made, or relief claimed by the defendant, in his defence. O. 20, r. 6, (E).

<sup>176</sup>  
Relief founded  
on separate  
grounds.  
[Cf. R. 274, (O).]

**4.** Where the plaintiff seeks relief in respect of several distinct claims or causes of complaint founded upon separate and distinct grounds, they shall be stated, as far as may be, separately and distinctly. And the same rule shall apply where the defendant relies upon several distinct grounds of defence, set-off, or counterclaim, founded upon separate and distinct facts. O. 20, r. 7, (E).

<sup>177</sup>  
Stated or  
settled  
account.

**5.** In every case in which the cause of action is a stated or settled account, the same shall be alleged with particulars; but in every case in which a statement of account is relied on by way of evidence or admission of any other cause of action which is pleaded, the same shall not be alleged in the pleadings. O. 20, r. 8, (E).

**O. XXI.  
rr. 1-3.**

## ORDER XXI.

### DEFENCE AND COUNTERCLAIM.

<sup>178</sup>  
Mere denial  
of debt  
insufficient.

**1.** In actions for a debt or liquidated demand in money, comprised in Order II., Rule 5, a mere denial of the debt shall be inadmissible. O. 21, r. 1, (E).

<sup>179</sup>  
Defences to  
actions on  
bills, etc.

**2.** In actions upon bills of exchange, promissory notes, or cheques, a defence in denial must deny some matter of fact; *e. g.*, the drawing, making, endorsing, accepting; presenting, or notice of dishonour of the bill or note. O. 21, r. 2, (E).

<sup>180</sup>  
Defences to  
actions under  
classes  
A. & B., O. 2,  
r. 5.

**3.** In actions comprised in Order II., Rule 5, classes (A) and (B), a defence in denial must deny such matters of fact, from which the liability of the defendant is alleged to arise, as are disputed; *e. g.*, in actions for goods bargained and sold or sold and delivered, the defence must deny the order or contract, the delivery, or the amount claimed; in an action for money had and received, it must deny the receipt of the money, or the existence of those facts which are alleged to make such receipt by the defendant a receipt to the use of the plaintiff. O. 21, r. 3, (E).

4. No denial or defence shall be necessary as to damages claimed or their amount; but they shall be deemed to be put in issue in all cases, unless expressly admitted. O. 21, r. 4, (E). <sup>181</sup> **Pleading to claim of damages.**

5. Where a defendant has appeared to a writ of summons specially indorsed under Order II., Rule 5, he shall deliver his defence within ten days from the time limited for appearance, unless such time is extended by the Court or a Judge, or unless in the meantime the plaintiff serves a summons for judgment under Order XIV., or a summons for directions. O. 21, r. 6, (E). <sup>182</sup> **Delivery of defence to specially indorsed writ. [Cf. R. 216, (O)].**

6. Where leave has been given to a defendant to defend, under Order XIV., he shall deliver his defence, if any, within such time as shall be limited by the order giving him leave to defend; or, if no time is thereby limited, then within eight days after the order. O. 21, r. 7, (E). <sup>183</sup> **Delivery of defence where leave given under O. 14.**

7. When a statement of claim is delivered pursuant to an order, or filed in default of appearance under Order XIII., rule 2, the defendant, unless otherwise ordered, shall deliver his defence within such time (if any) as shall be specified in such order, or, if no time be specified, within ten days from the delivery, or filing in default, of the statement of claim, unless in either case the time is extended by the Court or a Judge. O. 21, r. 8, (E). <sup>184</sup> **Time for delivery of defence under order.**

8. Where the Court or a Judge shall be of opinion that any allegations of fact denied or not admitted by the defence ought to have been admitted, the Court or Judge may make such order as shall be just with respect to any extra costs occasioned by their having been denied or not admitted. O. 21, r. 9, (E). <sup>185</sup> **Failure to make proper admissions. [Cf. R. 1149, (O)].**

9. Where any defendant seeks to rely upon any grounds as supporting a right of counterclaim, he shall, in his statement of defence, state specifically that he does so by way of counterclaim. O. 21, r. 10, (E). <sup>186</sup> **Defence staying counterclaim.**

10. Where a defendant by his defence sets up any counterclaim which raises questions between himself and the plaintiff, along with any other persons, he shall add to the title of his defence a further title similar to the title in a statement of claim, setting forth the names of all the persons who, if such counterclaim were to be enforced by cross action, would be defendants to such cross action, and shall deliver <sup>187</sup> **Counterclaim affecting third persons. [Cf. R. 248, (O)].**

**O. XXI.  
rr. 11-16.**

his statement of defence to such of them as are parties to the action within the period within which he is required to deliver it to the plaintiff. O. 21, r. 11, (E).

<sup>188</sup>  
Service of  
counterclaim  
on third party.  
[R. 249, (O)].

**11.** Where any such person, as in the last preceding rule mentioned, is not a party to the action, he shall be summoned to appear by being served with a copy of the defence, and such service shall be regulated by the same rules as are hereinbefore contained with respect to the service of a writ of summons, and every defence so served shall be indorsed in the Form No. 2 in Appendix B., Part II., or to the like effect. O. 21, r. 12, (E).

<sup>189</sup>  
Appearance  
by third  
party to  
counterclaim.

**12.** Any person not a defendant to the action, who is served with a defence and counterclaim as aforesaid, must appear thereto as if he had been served with a writ of summons to appear in an action. O. 21, r. 13, (E).

<sup>190</sup>  
Reply by third  
party to  
counterclaim.  
[Cf. R. 250, (O)].

**13.** Any person named in a defence as a party to a counterclaim thereby made may deliver a reply within the time within which he might deliver a defence if it were a statement of claim. O. 21, r. 14, (E).

<sup>191</sup>  
Striking out  
counterclaim.  
[Cf. R. 254, (O)].

**14.** Where a defendant sets up a counterclaim, if the plaintiff or any other person named in manner aforesaid as party to such counterclaim contends that the claim thereby raised ought not to be disposed of by way of counterclaim, but in an independent action, he may at any time before reply, apply to the Court or a Judge for an order that such counterclaim may be excluded, and the Court or a Judge may, on the hearing of such application, make such order as shall be just. O. 21, r. 15, (E).

<sup>192</sup>  
Discontinu-  
ance.

**15.** If, in any case in which the defendant sets up a counterclaim, the action of the plaintiff is stayed, discontinued, or dismissed, the counterclaim may nevertheless be proceeded with. O. 21, r. 16, (E).

<sup>193</sup>  
Judgment for  
balance of  
counterclaim.  
[R. 253, (O)].

**16.** Where in any action a set-off or counterclaim is established as a defence against the plaintiff's claim, the Court or a Judge may, if the balance is in favor of the defendant, give judgment for the defendant for such balance, or may otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case. O. 21, r. 17, (E).

17. Where a defendant does not dispute the plaintiff's claim and sets up no defence thereto, but sets up a counterclaim the Court or a Judge may stay proceedings respecting the plaintiff's claim until the counterclaim is disposed of, upon such terms as may seem just. R. 255, (O).

●. XXI.  
rr. 17-20.  
194  
Stay of proceedings on undisputed claim pending disputed counterclaim.

18. In every case in which a party shall plead the general issue, intending to give the special matter in evidence by virtue of an Act of Parliament, he shall insert in the margin of his pleading, the words "by statute," together with the year of the reign in which the Act of Parliament on which he relies, was passed, and also the chapter and section of such Act, and shall specify whether such Act is public or otherwise; otherwise such defence shall be taken not to have been pleaded by virtue of any Act of Parliament. O. 21, r. 19, (E).

195  
Pleading "Not Guilty by statute."  
[Cf. R. 287, (O)].

19. No plea or defence shall be pleaded in abatement. O. 21, r. 20, (E).

196  
Plea in abatement.  
[R. 283, (O)].

20. No defendant in an action for the recovery of land who is in possession by himself or his tenant need plead his title, unless his defence depends on an equitable estate or right, or he claims relief upon any equitable ground against any right or title asserted by the plaintiff. But, except in the cases hereinbefore mentioned, it shall be sufficient to state by way of defence that he is so in possession, and it shall be taken to be implied in such statement that he denies, or does not admit, the allegations of fact contained in the plaintiff's statement of claim. He may nevertheless rely upon any ground of defence which he can prove, except as hereinbefore mentioned. O. 21, r. 21, (E).

197  
Defence to action for recovery of land.  
[Cf. R. 285, (O)].

## ORDER XXII.

●. XXII.  
r. 1.

### PAYMENT INTO AND OUT OF COURT, TENDER, AND OFFER TO SUFFER JUDGMENT BY DEFAULT.

1. Where any action is brought to recover a debt or damages, any defendant may, before or at the time of delivering his defence, or at any later time by leave of the Court or a Judge, pay into court a sum of money by way of satisfaction, which shall be taken to admit the claim or cause of action in respect of which the payment is made; or he may, with a defence denying liability (except in actions or counterclaims

198  
Payment into Court in satisfaction, and denial of liability.  
[Cf. RR. 419, 420, (O)].

**O. XXII.**  
**rr. 2-6.**

for libel or slander), pay money into court which shall be subject to the provisions of Rule 6. The money shall be paid to the proper officer, who for receiving the same shall be allowed by the Court or Judge a commission not exceeding one per cent. on the amount so paid in. O. 22, r. 1, (E), *am.*; C. S. 1903, c. 111, s. 113.

<sup>199</sup>  
Payment in to  
be signified in  
defence.  
[R. 421, (O)].

**2.** Payment into Court shall be signified in the defence, and the claim or cause of action in satisfaction of which such payment is made, shall be specified therein. O. 22, r. 2, (E).

<sup>200</sup>  
Defence of  
tender before  
action.  
[R. 423, (O)].

**3.** With a defence setting up a tender before action, the sum of money alleged to have been tendered must be brought into Court. O. 22, r. 3, (E).

<sup>201</sup>  
Notice of  
payment in.  
[R. 422, (O)].

**4.** If the defendant pays money into Court before delivering his defence, he shall serve upon the plaintiff a notice specifying both the fact that he has paid in such money, and also the claim or cause of action, in respect of which such payment has been made. Such notice shall be in the Form No. 3 in Appendix B., Part II., with such variations as circumstances may require. O. 22, r. 4, (E).

<sup>202</sup>  
Payment out  
to plaintiff.  
[Cf. R. 423, (O)].

**5.** In the following cases of payment into court under this Order, viz :

(a) When payment into court is made before delivery of defence :

(b) When the liability of the defendant, in respect to the claim or cause of action in satisfaction of which the payment into court is made, is not denied in the defence ;

(c) When payment into court is made with a defence setting up a tender of the sum paid ;

the money paid into court shall be paid out to the plaintiff on his request, or to his solicitor on the plaintiff's written authority, unless the Court or a Judge shall otherwise order. O. 22, r. 5, (E).

<sup>203</sup>  
Rules where  
defence denies  
liability.

**6.** When the liability of the defendant, in respect of the claim or cause of action in satisfaction of which the payment into Court has been made, is denied in the defence, the following rules shall apply :—

(a) The plaintiff may accept, in satisfaction of the claim or cause of action in respect of which the payment into court has been made, the sum so paid in, in which case he shall be entitled to have the money paid out to him as hereinafter provided notwithstanding the defendant's denial of liability, whereupon all further proceedings in respect of such claim or cause of action, except as to costs, shall be stayed; or the plaintiff may refuse to accept the money in satisfaction, and reply accordingly, in which case the money shall remain in court, subject to the provisions hereinafter mentioned;

O. XXII.  
r. 7.

(b) If the plaintiff accepts the money so paid in, he shall after service of such notice in the Form No. 4 in Appendix B., Part II., as is in Rule 7 mentioned, or after delivery of a reply accepting the money, be entitled to have the money paid out to himself on request, or to his solicitor on the plaintiff's written authority, unless the Court or a Judge shall otherwise order;

(c) If the plaintiff does not accept, in satisfaction of the claim or cause of action, in respect of which the payment into court has been made, the sum so paid in, but proceeds with the action in respect of such claim or cause of action, or any part thereof, the money shall remain in court and be subject to the order of the Court or a Judge, and shall not be paid out of court except in pursuance of an order. If the plaintiff proceeds with the action in respect of such claim or cause of action, or any part thereof, and recovers less than the amount paid into court, the amount paid in shall be applied, so far as is necessary, in satisfaction of the plaintiff's claim, and the balance (if any) shall, under such order, be repaid to the defendant. If the defendant succeeds in respect of such claim or cause of action, the whole amount shall, under such order, be repaid to him. O. 22, r. 6, (E).

7. The plaintiff, when payment into court is made before delivery of defence, may within four days after the receipt of

204  
Plaintiff may  
accept pay-  
ment before  
defence, etc.  
[Cf. R.R. 423,  
424, 425. (O)].



**O. XXII.  
rr. 6-11.**

notice of such payment, or when such payment is first signified in a defence, may, before reply, accept in satisfaction of the claim or cause of action in respect of which such payment has been made the sum so paid in, in which case he shall give notice to the defendant in the Form No. 4 in Appendix B, Part II., and shall be at liberty, in case the entire claim or cause of action is thereby satisfied, to tax his costs after the expiration of four days from the service of such notice, unless the Court or a Judge shall otherwise order, and in case of non-payment of the costs within forty-eight hours after such taxation, to sign judgment for his costs so taxed. O. 22, r. 7, (E).

**205  
Consolidated  
actions.  
[Cf. R. 426, (O)].**

**8.** Where money is paid into Court in two or more actions which are consolidated, and the plaintiff proceeds to trial in one, and fails, the money paid in and the costs in all the actions shall be dealt with under this Order in the same manner as in the action tried. O. 22, r. 8, (E).

**206  
Payment in by  
plaintiff.  
[R. 427, (O)].**

**9.** A plaintiff may, in answer to a counterclaim, pay money into court in satisfaction thereof, subject to the like conditions as to costs and otherwise as upon payment into court by a defendant. O. 22, r. 9, (E).

**207  
Payment out  
of money paid  
into Court  
under order.**

**10.** Money paid into Court under an order of the Court or a Judge shall not be paid out of Court except in accordance with the provisions of section 39 of the principal Act. Provided that, where before the delivery of defence money has been paid into Court by the defendant pursuant to an order under the provisions of Order XIV., he may (unless the Court or a Judge shall otherwise order) by his pleading appropriate the whole or any part of such money, and any additional payment if necessary, to the whole or any specified portion of the plaintiff's claim; and the money so appropriated shall thereupon be deemed to be money paid into Court pursuant to the preceding rules of this Order relating to money paid into Court, and shall be subject in all respects thereto. O. 22, r. 11, (E), *am.*

**208  
Regulations as  
to payment  
into and out  
of Court.**

**11.** The manner of payment into and out of Court, and the manner in which money in Court shall be dealt with, shall in all cases where the regulations contained in Appendix M are applicable, be subject to such regulations. O. 22, r. 13, (E), *am.*

**12.** In any cause or matter in which a sum of money has been awarded to or recovered by an infant, or person of unsound mind not so found by inquisition, the Court or a Judge may, at or after the trial, order that the whole or any part of such sum shall be paid into court to the credit of an account intituled in the cause or matter; and any sum so paid into court, and any dividends or interest thereon, shall be subject to such orders as may from time to time be made by the Court or a Judge concerning the same, and may either be retained in Court or be invested, or be paid out of Court, or transferred to such persons, to be held and applied upon and for such trusts and in such manner as the Court or Judge shall direct. O. 22, r. 15, (E), *am.*

**209**  
**§. XXII.**  
**FF. 13-14.**  
 Money paid  
 in to account  
 of infant or  
 person of un-  
 sound mind.  
 [Cf. R. 840, (O)].

**13.** Where any action is brought to recover a debt or damages any defendant may, before or at the time of delivering his defence, or at any later time by leave of the Court or a Judge, file in the office of the proper officer an offer and consent in writing, signed by the defendant or his solicitor, to suffer judgment by default in respect of the cause or a part of the cause of action, or one or more of the causes of action for which the plaintiff sues, being for the recovery of debt or damages, and that judgment shall be rendered against him as debt or damages for a sum by him specified in the said writing. The same shall be entered of record, together with the time when the same was filed, and the plaintiff or his solicitor may at any time within ten days after he has received notice of such offer and consent, file as aforesaid a memorandum in writing of his acceptance of judgment for the sum so offered as debt or damages, and judgment may be signed accordingly with costs; or, if after such notice the Court or a Judge shall for good cause grant the plaintiff a further time to elect, then the plaintiff may signify his acceptance as aforesaid at any time before the expiration of the time so allowed, and judgment may be rendered upon such acceptance as if the acceptance had been within ten days as aforesaid. See C. S. 1903, c. 111, s. 188, *am.*

**210**  
 Offer and con-  
 sent to suffer  
 judgment by  
 default.

**14.** Whenever in the final disposition of any such action, such offer and consent shall have been made by the defendant, and the plaintiff shall not recover a greater sum than the sum so offered, not including interest on the sum recovered in debt or damages from the date of such offer, the defendant shall

**211**  
 Defendant's  
 costs where  
 offer not  
 accepted.

**O. XXII,  
r. 15.**

have judgment against the plaintiff for his costs by him incurred after the date of such offer, and execution shall issue therefor; and the plaintiff, if he shall recover any debt or damages, shall be allowed his costs only up to the date of such offer or consent. C. S. 1903, c. 111, s. 189.

<sup>212</sup>  
Payment in or  
offer not to be  
communicat-  
ed to jury.

**15.** Where a cause or matter is tried by a Judge with a jury no communication to the jury shall be made during the trial, either of the fact that money has been paid into court, or of the amount paid in or that an offer to suffer judgment by default has been made, as the case may be. The jury shall be required to find the amount of the debt or damages, as the case may be, without reference to any payment into Court, or of any offer to suffer judgment by default. O. 22, r. 22, (E), *am.*; C. S. 1903, c. 111, s. 193, *am.*

**O. XXIII,  
rr. 1, 2.**

### ORDER XXIII.

#### REPLY AND SUBSEQUENT PLEADINGS.

<sup>213</sup>  
Delivery of  
reply.  
[R. 236, (O)].

**1.** A plaintiff shall deliver his reply, if any, within twenty-one days after the defence or the last of the defences shall have been delivered, unless the time shall be extended by the Court or a Judge. O. 23, r. 1, (E), as unamended by R. S. C., July, 1902, r. 7, (E).

<sup>214</sup>  
Leave for  
subsequent  
pleadings.  
[Cf. R. 257, (O)].

**2.** No pleading subsequent to reply other than a joinder of issue shall be pleaded without leave of the Court or a Judge, and then shall be pleaded only upon such terms as the Court or Judge shall think fit. Every pleading subsequent to reply shall be delivered within the time specified in the order giving leave to deliver the same or if no time be so specified, within four days after the delivery of the previous pleading, unless the time shall be extended by the Court or a Judge. O. 23, r. 3, (E), *am.*

**O. XXIV,  
r. 1.**

### ORDER XXIV.

#### MATTERS ARISING PENDING THE ACTION.

<sup>215</sup>  
Before  
delivery of  
statement of  
defence.  
[Cf. R.R. 280,  
280, (O)].

**1.** Any ground of defence which has arisen after action brought, but before the defendant has delivered his statement of defence, and before the time limited for his doing so has expired, may be raised by the defendant in his statement of defence, either alone or together with other grounds of defence.

And if, after a statement of defence has been delivered, any ground of defence arises to any set-off or counterclaim alleged therein by the defendant, it may be raised by the plaintiff in his reply, either alone or together with any other ground of reply. O. 24, r. 1, (E).

●. XXIV,  
rr. 2, 3.

2. Where any ground of defence arises after the defendant has delivered a statement of defence, or after the time limited for his doing so has expired, the defendant may, and where any ground of defence to any set-off or counterclaim arises after reply, or after the time limited for delivering a reply has expired, the plaintiff may, within eight days after such ground of defence has arisen, or at any subsequent time by leave of the Court or a Judge, deliver a further defence or further reply as the case may be, setting forth the same. O. 24, r. 2, (E).

<sup>216</sup>  
Further  
defence or  
reply.  
[Cf. R.R. 291,  
292, (O)].

3. Whenever any defendant, in his statement of defence, or in any further statement of defence, as in the last rule mentioned, alleges any ground of defence which has arisen after the commencement of the action, the plaintiff may deliver a confession of such defence (which confession may be in the Form No. 5 in Appendix B., Part II., with such variations as circumstances may require), and may thereupon sign judgment for his costs up to the time of the pleading of such defence, unless the Court or a Judge shall, either before or after the delivery of such confession, otherwise order. O. 24, r. 3, (E).

<sup>217</sup>  
Confession of  
defence.  
[Cf. R. 295, (O)].

# ORDER XXV.

## PROCEEDINGS IN LIEU OF DEMURRER.

1. No demurrer shall be allowed. O. 25, r. 1, (E).

●. XXV,  
rr. 1-3.

2. Any party shall be entitled to raise by his pleading any point of law, and any point so raised shall be disposed of by the Judge who tries the cause at or after the trial, provided, that by consent of the parties, or by order of the Court or a Judge on the application of either party, the same may be set down for hearing, and disposed of at any time before the trial. O. 25, r. 2, (E).

<sup>218</sup>  
Demurrer  
abolished.  
[Cf. R. 259, (O)].

3. If, in the opinion of the Court or a Judge, the decision of such point of law substantially disposes of the whole action, or of any distinct cause of action, ground of defence, set-off,

<sup>219</sup>  
Points of law  
may be raised  
by pleadings.  
[R. 258, (O)].

<sup>220</sup>  
Dismissal of  
action.  
[R. 260, (O)].

**O. XXV,  
rr. 4, 5.**

counterclaim, or reply therein, the Court or Judge may thereupon dismiss the action or make such other order therein as may be just. O. 25, r. 3, (E).

<sup>221</sup>  
Striking out  
pleading  
where no  
reasonable  
cause of action  
disclosed.  
[R. 261, (O)].

4. The Court or a Judge may order any pleading to be struck out, on the ground that it discloses no reasonable cause of action or answer, and in any such case, or in case of the action or defence being shown by the pleadings to be frivolous or vexatious, the Court or a Judge may order the action to be stayed or dismissed, or judgment to be entered accordingly, as may be just. O. 25, r. 4, (E).

<sup>222</sup>  
Declaratory  
judgment.  
[R. S. O. 1897,  
c. 51, s. 57 (5)].

5. No action or proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the Court may make binding declarations of right whether any consequential relief is or could be claimed or not. O. 25, r. 5, (E); C. S. 1903, c. 112, s. 118.

**O. XXVI,  
r. 1.**

## ORDER XXVI.

### DISCONTINUANCE.

<sup>223</sup>  
Plaintiff may  
discontinue  
before  
defence.

1. The plaintiff may, at any time before receipt of the defendant's defence, or after the receipt thereof, before taking any other proceeding in the action (save any interlocutory application), by notice in writing filed and served, wholly discontinue his action against all or any of the defendants or withdraw any part or parts of his alleged cause of complaint, and thereupon he shall pay such defendant's costs of the action, or if the action be not wholly discontinued, the costs occasioned by the matter so withdrawn. Such costs shall be taxed, and such discontinuance or withdrawal, as the case may be, shall not be a defence to any subsequent action. Save as in this rule otherwise provided, it shall not be competent for the plaintiff to withdraw the record or discontinue the action without leave of the Court or a Judge, but the Court or a Judge may, before, or at, or after the hearing or trial, upon such terms as to costs, and as to any other action, and otherwise as may be just, order the action to be discontinued, or any part of the alleged cause of complaint to be struck out. The Court or a Judge may, in like manner, and with the like discretion as to terms, upon the application of a defendant, order the whole or any part of his alleged grounds of defence or counterclaim to be withdrawn or struck out, but it shall not

Discontinu-  
ance by  
defendant.  
[Cf. R. 431, (O)].

be competent to a defendant to withdraw his defence, or any part thereof, without such leave. A plaintiff may discontinue as to one or more of several defendants. O. 26, r. 1, (E); R. 430 (1), (O).

○. XXVI,  
rr. 3-4.

2. When a cause has been entered for trial, it may be withdrawn by either plaintiff or defendant, upon producing to the proper officer a consent in writing, signed by the parties. O. 26, r. 2, (E).

<sup>224</sup>  
Withdrawal  
by consent.  
[R. 543, (O)].

3. Any defendant may enter judgment for the costs of the action if it is wholly discontinued against him, or for the costs occasioned by the matter withdrawn, if the action be not wholly discontinued, in case such respective costs are not paid within four days after taxation. O. 26, r. 3, (E).

<sup>225</sup>  
Entering  
judgment  
on discontinu-  
ance.  
[Cf. R. 430 (1),  
(O)].

4. If any subsequent action shall be brought before payment of the costs of a discontinued action, for the same, or substantially the same, cause of action, the Court or a Judge may, if they or he think fit, order a stay of such subsequent action, until such costs shall have been paid. O. 26, r. 4, (E).

<sup>226</sup>  
Staying subse-  
quent action  
until costs  
paid.  
[Cf. R. 1198 (d),  
(O)].

ORDER XXVII.

○. XXVII,  
rr. 1-3.

DEFAULT OF PLEADING.

1. If the plaintiff, being bound to deliver a statement of claim, does not deliver the same within the time allowed for that purpose, the defendant may, at the expiration of that time, apply to the Court or a Judge to dismiss the action with costs, for want of prosecution; and on the hearing of such application the Court or Judge may, if no statement of claim shall have been delivered, order the action to be dismissed accordingly, or may make such other order on such terms as the Court or Judge shall think just. O. 27, r. 1, (E).

<sup>227</sup>  
Failure of  
plaintiff to  
deliver state-  
ment of claim.  
[R. 432, (O)].

2. If the plaintiff's claim be only for a debt or liquidated demand, and the defendant does not, within the time allowed for that purpose, deliver a defence, the plaintiff may, at the expiration of such time, enter final judgment for the amount claimed, with costs. O. 27, r. 2, (E).

<sup>228</sup>  
Judgment on  
defendant's  
default in  
claim for debt.  
[Cf. R. 587, (O)].

3. When in any such action, as in the last preceding rule mentioned, there are several defendants, if one of them make default, as mentioned in the last preceding rule, the plaintiff

<sup>229</sup>  
Default of one  
defendant.  
[Cf. R. 588, (O)].

**O. XXVII.**  
**RT. 4-7.**

may enter final judgment against the defendant so making default, and issue execution upon such judgment without prejudice to his right to proceed with his action against the other defendants. O. 27, r. 3, (E).

<sup>230</sup>  
Judgment by  
default on  
claim for  
damages or  
detention of  
goods.  
[Cf. R. 589, (O)].

4. If the plaintiff's claim be for pecuniary damages only, or for detention of goods with or without a claim for pecuniary damages, and the defendant or all the defendants, if more than one, make default, as mentioned in Rule 2, the plaintiff may enter an interlocutory judgment against the defendant or defendants, and a writ of inquiry shall issue to assess the value of the goods, and the damages, or the damages only, as the case may be. But the Court or a Judge may order that, instead of a writ of inquiry, the value and amount of damages, or either of them, shall be ascertained in any way which the Court or Judge may direct. O. 27, r. 4, (E).

<sup>231</sup>  
Default of one  
or more  
defendants.  
[Cf. R. 589, (O)].

5. When in any such action, as in Rule 4 mentioned, there are several defendants, if one or more of them make default, as mentioned in Rule 2, the plaintiff may enter an interlocutory judgment against the defendant or defendants so making default, and proceed with his action against the others. And in such case the value and amount of damages against the defendant making default shall be assessed at the same time with the trial of the action or issues therein against the other defendants, unless the Court or a Judge shall otherwise direct. O. 27, r. 5, (E).

<sup>232</sup>  
Debt or  
damages and  
detention of  
goods or  
damages.

6. If the plaintiff's claim be for a debt or liquidated demand, and also for pecuniary damages only, or for detention of goods with or without a claim for pecuniary damages, and any defendant make default, as mentioned in Rule 2, the plaintiff may enter final judgment for the debt or liquidated demand, and also enter interlocutory judgment for the value of the goods and the damages, or the damages only, as the case may be, and proceed as mentioned in Rules 4 and 5. O. 27, r. 6, (E).

<sup>233</sup>  
Default in  
action for  
land.  
[Cf. R. 590, (O)].

7. In an action for the recovery of land, if the defendant makes default as mentioned in Rule 2, the plaintiff may enter a judgment that the person whose title is asserted in the writ of summons shall recover possession of the land, with his costs. O. 27, r. 7 (E).

8. Where the plaintiff has indorsed a claim for mesne profits, arrears of rent, or double value in respect of the premises claimed, or any part of them, or damages for breach of contract or wrong or injury to the premises claimed upon a writ for the recovery of land, if the defendant makes default as mentioned in Rule 2, or, if there be more than one defendant some or one of the defendants make such default, the plaintiff may enter judgment against the defaulting defendant or defendants and proceed as mentioned in Rules 4 and 5. O. 27, r. 8, (E).

<sup>234</sup>  
O. XXVII.  
rr. 8-11.

Claim for  
mesne profits,  
etc.  
[Cf. R. 501, (O)].

9. If the plaintiff's claim be for a debt or liquidated demand or for pecuniary damages only, or for detention of goods with or without a claim for pecuniary damages, or for any of such matters, or for the recovery of land, and the defendant delivers a defence, which purports to offer an answer to part only of the plaintiff's alleged cause of action, the plaintiff may by leave of the Court or a Judge enter judgment, final or interlocutory, as the case may be, for the part unanswered; provided that the unanswered part consists of a separate cause of action, or is severable from the rest, as in the case of part of a debt or liquidated demand; provided also that, where there is a counterclaim, execution on any such judgment as above mentioned in respect of the plaintiff's claim shall not issue without leave of the Court or a Judge. O. 27, r. 9, (E).

<sup>235</sup>  
Defence to  
part of claim  
only.

10. In all other actions than those in the preceding rules or in Rule 15, of this Order mentioned, if the defendant makes default in delivering a defence, the plaintiff may set down the action on motion for judgment, and such judgment shall be given as upon the statement of claim the Court or a Judge shall consider the plaintiff to be entitled to. O. 27, r. 11, (E), *am.*

<sup>236</sup>  
Other actions.  
[Cf. R. 593 (1),  
(O)].

11. Where in any such action as mentioned in the last preceding rule, there are several defendants, then, if one of such defendants make such default as aforesaid, the plaintiff may either (if the cause of action is severable) set down the action at once on motion for judgment against the defendant so making default, or may set it down against him at the time when it is entered for trial or set down on motion for judgment against the other defendants. O. 27, r. 12, (E).

<sup>237</sup>  
Default by one  
of several  
defendants.



**O. XXVII.  
rr. 12-15.**

<sup>238</sup>  
Close of plead-  
ings on  
default.  
[Cf. R. 262, (O)].

**12.** If the plaintiff does not deliver a reply, or any party does not deliver any subsequent pleading, within the period allowed for that purpose, the pleadings shall be deemed to be closed at the expiration of that period, and all the material statements of fact in the pleading last delivered shall be deemed to have been denied and put in issue. O. 27, r. 13, (E).

<sup>239</sup>  
Default of  
third party.  
[Cf. R. 263, (O)].

**13.** In any case in which issues arise in an action other than between plaintiff and defendant, if any party to any such issue makes default in delivering any pleading, the opposite party may apply to the Court or a Judge for such judgment, if any, as upon the pleadings he may appear to be entitled to. And the Court or Judge may order judgment to be entered accordingly, or may make such other order as may be necessary to do complete justice between the parties. O. 27, r. 14, (E).

<sup>240</sup>  
Setting aside  
judgment by  
default.  
[Cf. R. 639, (O)].

**14.** Any judgment by default, whether under this Order or under any other of these Rules, may be set aside by the Court or a Judge, upon such terms as to costs or otherwise as such Court or Judge may think fit, and where an action has been set down on motion for judgment under Rule 10 of this Order, such setting down may be dealt with by a Court or a Judge in the same way as if a judgment by default had been signed when the case was set down. O. 27, r. 15, (E.)

<sup>241</sup>  
Foreclosure  
actions.

**15.** In an action for the foreclosure of a mortgage, or for the foreclosure and sale of mortgaged premises, or for redemption, where no statement of defence is delivered, the plaintiff may, after the time for delivering a statement of defence has expired, give notice of motion for a day therein named for judgment to be made upon affidavit, which notice shall be served ten days before the day so named. The Court or a Judge, upon motion made pursuant to such notice on proof thereof, and on proof by affidavit of the allegations in the statement of claim, or in the indorsement on the writ where the defendant has stated in his appearance that he does not require the delivery of a statement of claim, and on such documentary and other evidence as may be deemed requisite by the Court or Judge, may make such judgment as might have been made had the cause been at issue and duly established in evidence, unless upon special circumstances disclosed by affidavit it should be thought fit to allow the defendant further time for defence.

ORDER XXVIII.

O. XXVIII,  
rr. 1-4.

CONFESSION OF JUDGMENT.

1. Leave to enter judgment upon any *cognovit actionem* <sup>242</sup> or warrant of attorney, more than one and less than ten years old, shall be obtained by order of a Judge, made *ex parte*, and if ten years old or more, by motion upon notice. See R. 599, (O.); R. 2, S. C., E. T. 1848. Leave to enter judgment on *cognovit*, when necessary to be obtained.

2. No confession of judgment, or *cognovit actionem*, shall be valid or effectual to support any judgment or writ of execution, unless within thirty days after the same has been given, a sworn copy thereof is filed of record in the office of the Registrar of Deeds in the county in which the person giving such confession of judgment or *cognovit actionem* resides; and a book shall be kept in every such office, to be called the Cognovit Book, in which shall be entered the names of the plaintiff and defendant in every such confession or *cognovit*, the amount of the true debt or arrangement secured thereby, the time when judgment may be entered and execution issued thereon, and the day when such copy is filed in the said office; and such book shall be open to inspection by any person during office hours, on the payment of a fee of 20 cents. R. 600, (O), *am.*, <sup>243</sup> Confession and *cognovits* to be filed with Registrar of Deeds.

3. No warrant of attorney to confess judgment in any *cognovit actionem*, given by any person, shall be of any force, unless there is present some solicitor on behalf of such person expressly named by him, and attending at his request, to inform him of the nature and effect of such warrant or *cognovit*, before the same is executed, which solicitor shall subscribe his name as a witness to the due execution thereof, and thereby declare himself to be solicitor for the person executing the same, and state that he subscribes as such solicitor, and in the affidavit of execution, the attendance of such solicitor, and the fact of his being a subscribing witness, shall be plainly stated, which affidavit and the warrant of attorney, or *cognovit*, shall be filed at the time of entering judgment thereon. R. 601, (O). See R. 6, S. C., H. T. 1837. <sup>244</sup> *cognovit* to be executed in presence of solicitor.

4. The person who prepares any *cognovit* or warrant of attorney to confess judgment, which is to be subject to any defeasance, shall cause such defeasance to be written on the <sup>245</sup> Defeasance with *cognovit* to be on same paper.

§. XXVIII.  
rr. 5-8.

same paper or parchment on which the *cognovit* or warrant is written, or cause a memorandum in writing to be made on such *cognovit* or warrant containing the substance or effect of such defeasance. R. 5, S. C., H. T. 1837; R. 602; (O).

246  
Warrant of  
attorney to be  
filed on  
judgment  
being signed.

5. No judgment shall be signed upon any warrant authorizing any attorney to confess judgment without such warrant being delivered to and filed with the proper officer. R. 4, S. C., E. T. 1837.

247  
Confession  
where war-  
rant of  
attorney  
executed by  
agent.

6. In no case where the warrant of attorney to confess judgment appears to have been executed, not personally, but by a solicitor or agent in the name of the principal, shall any confession be signed thereon by a solicitor, unless the deed or other power conveying the authority to execute the warrant, together with an affidavit of the due execution thereof by the principal, be produced to, and read and examined by, the solicitor who is applied to sign the confession, before signing the same; nor shall judgment be entered upon any such confession, unless such deed or other power, and affidavit of execution, be produced to the proper officer and filed with the warrant of attorney and confession. R. 2, S. C., T. T. 1857.

248  
Warrant of  
attorney, etc.,  
to be dated.

7. Every warrant of attorney to confess judgment, and every deed or other power by which authority is granted to execute the warrant, shall bear date of the day upon which the same are respectively executed, and, if it should happen that such warrant of attorney, deed, or other power, is to be given by two or more persons who cannot conveniently execute the same on the same day, then the warrant, deed, or power shall bear date of the day on which it shall be first executed; and the day on which any subsequent execution shall take place shall be specified in the attestation of the subscribing witness or witnesses to such execution. R. 4, S. C., T. T. 1857.

249  
Duty of solicitor signing  
confession to  
annex to  
signature date  
of signing, etc.

8. Every solicitor signing a confession of judgment upon a warrant of attorney, shall annex to his signature the date of signing, and mark the warrant with his name, or initial letters of his name, and also any deed or power under which the warrant is executed, where the execution is not personal. R. 5, S. C., T. T. 1857.

## ORDER XXIX.

O. XXIX.  
PT. 1-5.

## AMENDMENT.

1. The Court or a Judge may, at any stage of the proceedings, allow either party to alter or amend his indorsement or pleadings, in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. O. 28, r. 1, (E).

<sup>250</sup>  
Amendment  
of indorse-  
ment or  
pleadings.  
(Cf. R. 312, (O)).

2. The plaintiff may, without any leave, amend his statement of claim, whether indorsed on the writ or not, once at any time before the expiration of the time limited for reply, and before replying, or, where no defence is delivered, at any time before the expiration of four weeks from the appearance of the defendant who shall have last appeared. O. 28, r. 2, (E).

<sup>251</sup>  
Amendment  
by plaintiff  
without leave.  
(Cf. R. 300, (O)).

3. A defendant who has set up any counterclaim or set-off may, without any leave, amend such counterclaim or set-off at any time before the expiration of the time allowed him for answering the reply and before such answer, or in case there be no reply, then at any time before the expiration of twenty-eight days from defence. O. 28, r. 3, (E).

<sup>252</sup>  
Amendment  
of counter-  
claim or set-off  
without leave.

4. Where any party has amended his pleading under either of the last two preceding Rules, the opposite party may, within eight days after delivery to him of the amended pleading, apply to the Court or a Judge to disallow the amendment, or any part thereof, and the Court or a Judge may, if satisfied that the justice of the case requires it, disallow the same, or allow it, subject to such terms as to costs or otherwise as may be just. O. 28, r. 4, (E).

<sup>253</sup>  
Application  
for disallow-  
ance of  
amendment.  
(Cf. R. 301, (O)).

5. Where any party has amended his pleading, under Rule 2 or 3, the opposite party shall plead to the amended pleading or amend his pleading within the time he then has to plead or within eight days from the delivery of the amendment, whichever shall last expire; and in case the opposite party has pleaded before the delivery of the amendment, and does not plead again or amend within the time above mentioned, he shall be deemed to rely on his original pleading in answer to such amendment. O. 28, r. 5, (E).

<sup>254</sup>  
Pleading or  
amendment  
by opposite  
party after  
amendment.  
(R. 302, (O)).

**O. XXIX,  
rr. 6-12.**

<sup>255</sup>  
Application  
for leave to  
amend.  
[R. 304, (O)].

**6.** In all cases not provided for by the preceding Rules of this Order, application for leave to amend may be made by either party to the Court or a Judge, or to the Judge at the trial of the action, and such amendment may be allowed upon such terms as to costs or otherwise as may be just. O. 28, r. 6, (E).

<sup>256</sup>  
Failure to  
amend after  
order.  
[R. 305, (O)].

**7.** If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited then within fourteen days from the date of the order, such order to amend shall, on the expiration of such limited time as aforesaid, or of such fourteen days, as the case may be, become *ipso facto* void, unless the time is extended by the Court or a Judge. O. 28, r. 7, (E).

<sup>257</sup>  
How amend-  
ment to be  
made.  
[R. 307 (1), (O)].

**8.** An indorsement or pleading may be amended by written alterations in the copy which has been delivered, and by additions on paper, to be interleaved therewith if necessary, unless the amendments require the insertion of more than 200 words in any one place, or are so numerous or of such a nature that making them in the copy delivered would render the same difficult or inconvenient to read; in either of which cases the amendment shall be made by delivering a fresh copy of the pleadings as amended. O. 28, r. 8, (E), *am.*

<sup>258</sup>  
Marking of  
amended  
pleadings.  
[R. 307 (1), (O)].

**9.** Whenever any indorsement or pleading is amended, the same, when amended, shall be marked with the date of the order, if any, under which the same is so amended, and of the day on which such amendment is made, in manner following, viz.: "Amended                      day of  
pursuant to order of                      dated the                      of                      ."  
O. 28, r. 9, (E).

<sup>259</sup>  
Delivery of  
amended  
pleadings.  
[R. 308, (O)].

**10.** Whenever any indorsement or pleading is amended, such amended document shall be delivered to the opposite party within the time allowed for amending the same. O. 28, r. 10, (E).

<sup>260</sup>  
Clerical mis-  
takes, etc.  
[R. 640, (O)].

**11.** Clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Court or a Judge, on motion or summons, without an appeal. O. 28, r. 11, (E).

<sup>261</sup>  
General power  
to amend.  
[Cf. R. 312, (O)].

**12.** The Court or a Judge may at any time, and on such terms as to costs or otherwise as the Court or Judge may

all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on the proceedings. **O. 28, r. 12, (E).** **O. XXIX.  
r. 12.**

**13.** The costs of and occasioned by any amendment made pursuant to Rules 2 and 3 of this Order shall be borne by the party making the same, unless the Court or a Judge shall otherwise order. **O. 28, r. 13, (E).** **Costs.  
262**

ORDER XXX.

**O. XXX.  
rr. 1, 2.**

SUMMONS FOR DIRECTIONS.

**1.—(a)** A summons for directions in any action may be taken out by the plaintiff and shall be returnable in not less than five days. **Summons for  
directions.  
263**

**(b)** Such summons shall be taken out after appearance and before the plaintiff takes any fresh step in the action other than application for an injunction, or for a receiver, or the entering of judgment in default of defence under Order XXVII.

**(c)** Where under Order XIV., the plaintiff applies for judgment, or where, under Order XVIII *a.*, the defendant applies for a statement of claim, the Judge may deal with such application as if the plaintiff had been entitled to take out and had taken out a summons for directions. **O. 30, r. 1, (a), (b), (c), (E), *am.***

**(d)** The summons shall be in the Form No. 8, Appendix K., with such variations as circumstances may require, and shall be addressed to and served upon all such parties to the action as may be affected thereby.

**2.** Upon the hearing of the summons the Court or a Judge shall, so far as practicable, make such order as may be just with respect to all the proceedings to be taken in the action, and as to the costs thereof, and more particularly with respect to the following matters: Pleading, particulars, admissions, discovery, interrogatories, inspection of documents, inspection of real or personal property, commissions, examination of witnesses, place and mode of trial. Such order shall be in the Form No. 9, Appendix K., with such variations as circumstances may require. **O. 30, r. 2, (E).** **Order as to  
interlocutory  
proceedings.  
264**

(7)

**O. XXX.**  
**rr. 3-7.**<sup>265</sup>  
No affidavit to  
be used.

3. No affidavit shall be used on the hearing of the said summons except by special order of the Court or a Judge. O. 30, r. 3, (E).

<sup>266</sup>  
Application  
by any party  
on hearing of  
summons.

4. On the hearing of the summons, any party to whom the summons is addressed shall, so far as practicable, apply for any order or directions as to any interlocutory matter or thing in the action which he may desire. O. 30, r. 4, (E).

<sup>267</sup>  
Subsequent  
applications.

5. Any application subsequently to the original summons, and before judgment, for any directions as to any interlocutory matter or thing, by any party, shall be made under the summons by three clear days' notice to the other party stating the grounds of the application. O. 30, r. 5, (E), *am.*

<sup>268</sup>  
Costs of  
subsequent  
applications.

6. Any application by any party, which might have been made at the hearing of the original summons shall, if granted on any subsequent application, be granted at the costs of the party applying, unless the Court or a Judge shall be of the opinion that the application could not properly have been made at the hearing of the original summons. O. 30, r. 6, (E).

<sup>269</sup>  
Order as to  
form of proof.

7. On the hearing of the summons, the Court or a Judge may order that evidence of any particular fact, to be specified in the order, shall be given by statement on oath of information and belief, or by production of documents or entries in books, or by copies of documents or entries, or otherwise as the Court or Judge may direct. O. 30, r. 7, (E).

**O. XXXI.**  
**r. 1.**

## ORDER XXXI.

## DISCOVERY AND INSPECTION.

<sup>270</sup>  
Discovery by  
interrogatories.

1. In any cause or matter the plaintiff may with his statement of claim, and the defendant may with his statement of defence, or within such further time as may be allowed to either of them by a Judge, deliver interrogatories in writing for the examination of the opposite parties, or any one or more of such parties, and such interrogatories, when delivered, shall have a note at the foot thereof, stating which of such interrogatories each of such persons is required to answer. Provided also that interrogatories which do not relate to any matters in question in the cause or matter shall be deemed irrelevant, notwithstanding that they might be admissible on

the oral cross-examination of a witness. A copy of the interrogatories, when delivered, shall be filed in the office of the proper officer. O. 31, r. 1, (E), *am.* O. XXXI,  
rr. 2-7.

2. In adjusting the costs of the cause or matter, inquiry shall, at the instance of any party, be made into the propriety of exhibiting such interrogatories, and if it is the opinion of the taxing officer, or of the Court or Judge, either with or without an application for inquiry, that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be paid in any event by the party in fault. O. 31, r. 3, (E); C. S. 1903, c. 112, s. 45. 271  
Costs of inter-  
rogatories.

3. Interrogatories shall be in the Form No. 6, in Appendix B., with such variations as circumstances may require. O. 31, r. 4, (E). 272  
Form of inter-  
rogatories.

4. If any party to a cause or matter be a body corporate or a joint stock company, whether incorporated or not, or any other body of persons, empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may deliver interrogatories to any member or officer of such corporation, company, or body: O. 31, r. 5, (E), *am.* 273  
Corporations.

5. Any objection to answering any one or more of several interrogatories, on the ground that it or they is or are scandalous or irrelevant, or not *bona fide* for the purpose of the cause or matter, or that the matters inquired into are not sufficiently material at that stage, or on any other ground, may be taken in the affidavit in answer. O. 31, r. 6, (E). 274  
Objections to  
interroga-  
tories.

6. Any interrogatories may be set aside on the ground that they have been exhibited unreasonably or vexatiously, or struck out on the ground that they are prolix, oppressive, unnecessary, or scandalous; and any application for this purpose may be made within seven days after service of the interrogatories. O. 31, r. 7, (E). 275  
Setting aside  
and striking  
out interroga-  
tories.

7. Interrogatories shall be answered by affidavit to be filed and delivered within ten days, or within such other time as the Judge may allow. O. 31, r. 8, (E), *am.* 276  
Answer by  
affidavit,  
when to be.



9. XXXI.  
rr. 8-13.  
277  
Form of affidavit  
in answer.

8. An affidavit in answer to interrogatories shall be in the Form No. 7, in Appendix B, with such variations as circumstances may require. O. 31, r. 9, (E), *am.*

278  
Objections to  
answer.

9. No exceptions shall be taken to any affidavit in answer, but the sufficiency or otherwise of any such affidavit objected to as insufficient shall be determined by the Court or a Judge on motion or summons. O. 31, r. 10, (E).

279  
Order to  
answer or to  
answer  
further.

10. If any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the Court, or a Judge for an order requiring him to answer, or to answer further, as the case may be. And an order may be made requiring him to answer, or answer further, either by affidavit or by *viva voce* examination, as the Judge may direct. O. 31 r. 11, (E).

280  
Application  
for discovery  
of documents.  
[Cf. R. 464, (O)].

11. Any party may, without filing any affidavit, apply to the Court or a Judge for an order directing any other party to any cause or matter to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. On the hearing of such application the Court or Judge may either refuse or adjourn the same, if satisfied that such discovery is not necessary, or not necessary at that stage of the cause or matter, or make such order, either generally or limited to certain classes of documents, as may, in their or his discretion, be thought fit. Provided that discovery shall not be ordered when and so far as the Court or Judge shall be of opinion that it is not necessary either for disposing fairly of the cause or matter, or for saving costs. O. 31, r. 12, (E); C. S. 1903, c. 112, s. 72.

281  
Affidavit of  
documents.  
[Cf. R. 467, (O)].

12. The affidavit to be made by a party against whom such order as is mentioned in the last preceding rule has been made, shall specify which, if any, of the documents therein mentioned he objects to produce, and it shall be in the Form No. 8 in Appendix B, with such variations as circumstances may require. O. 31, r. 13, (E); C. S. 1903, c. 112, s. 73.

282  
Production of  
documents.  
[R. 463, (O)].

13. It shall be lawful for the Court or a Judge, at any time during the pendency of any cause or matter, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any

matter in question in such cause or matter, as the Court or Judge shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just. O. 31, r. 14; (E); C. S. 1903, c. 112, s. 74.

§. XXXI,  
rr. 14-16.

**14.** Every party to a cause or matter shall be entitled, at any time, by notice in writing, to give notice to any other party, in whose pleadings or affidavits reference is made to any document, to produce such document for the inspection of the party giving such notice, or of his solicitor, and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such cause or matter, unless he shall satisfy the Court or a Judge that such document relates only to his own title, he being a defendant to the cause or matter, or that he had some other cause or excuse which the Court or Judge shall deem sufficient for not complying with such notice, in which case the Court or Judge may allow the same to be put in evidence on such terms as to costs and otherwise as the Court or Judge shall think fit. O. 31, r. 15, (E); C. S. 1903, c. 112, s. 75.

<sup>283</sup>  
Notice to pro-  
duce docu-  
ments referred  
to in pleadings  
or affidavits.  
[Cf. R. 469, (O)].

**15.** Notice to any party to produce any documents referred to in his pleading or affidavits shall be in the Form No. 9 in Appendix B., with such variations as circumstances may require. O. 31, r. 16, (E).

<sup>284</sup>  
Form of notice  
to produce.  
[Cf. R. 469, (O)].

**16.** The party to whom such notice is given shall, within three days from the receipt of such notice, if all the documents therein referred to have been set forth by him in such affidavit as is mentioned in Rule 12, or if any of the documents referred to in such notice have not been set forth by him in any such affidavit, then, within four days from the receipt of such notice, deliver to the party giving the same a notice stating a time, within three days from the delivery thereof, at which the documents, or such of them as he does not object to produce, may be inspected at the office of his solicitor, or in the case of bankers' books, or other books of account, or books in constant use for the purposes of any trade or business at their usual place of custody, and stating which (if any) of the documents he objects to produce, and on what ground. Such notice shall be in the Form No. 10 in Appendix B., with such variations as circumstances may require. O. 31 r. 17, (E), *am*; C. S. 1903, c. 112, s. 76, *am*.

<sup>285</sup>  
Notice  
appointing  
time for  
inspection.  
[Cf. R. 470, (O)].

**§. XXXI.  
rr. 17, 18.**

286  
Order for  
inspection on  
default of  
appointing  
time by notice.  
[Cf. R. 471.(O)].

**17.—(1)** If the party served with notice, under Rule 16, omits to give such notice of a time for inspection, or objects to give inspection, or offers inspection elsewhere than at the office of his solicitor, the Court or Judge may, on the application of the party desiring it, make an order for inspection in such place and in such manner as he may think fit: Provided, that the order shall not be made when and so far as the Court or a Judge shall be of opinion that it is not necessary either for disposing fairly of the cause or matter or for saving costs. O. 31, r. 18 (1), (E.); C. S. 1903, c. 112, s. 77.

(2) Any application to inspect documents, except such as are referred to in the pleadings, particulars, or affidavits of the party against whom the application is made, or disclosed in his affidavit of documents, shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party. The Court or Judge shall not make such order for inspection of such documents when and so far as the Court or Judge shall be of opinion that it is not necessary either for disposing fairly of the cause or matter or for saving costs. O. 31, r. 18 (2), (E).

287  
Verified  
copies of  
entries in  
business  
books.

**18.—(1)** Where inspection of any business books is applied for, the Court or a Judge may, if they or he shall think fit, instead of ordering inspection of the original books, order a copy of any entries therein to be furnished and verified by the affidavit of some person who has examined the copy with the original entries, and such affidavit shall state whether or not there are in the original book any and what erasures, interlineations, or alterations. Provided that, notwithstanding that such copy has been supplied, the Court or a Judge may order inspection of the book from which the copy was made.

Privilege.

(2) Where, on an application for an order for inspection, privilege is claimed for any document, it shall be lawful for the Court or a Judge to inspect the document for the purpose of deciding as to the validity of the claim of privilege.

Further  
affidavit as to  
documents.

(3) The Court or a Judge may, on the application of any party to a cause or matter at any time, and whether an affidavit of documents shall or shall not have already been

ordered or made, make an order requiring any other party to state by affidavit, whether any one or more specific documents, to be specified in the application, is or are, or has or have at any time been in his possession or power; and, if not then in his possession, when he parted with the same, and what has become thereof. Such application shall be made on an affidavit stating that in the belief of the deponent, the party against whom the application is made has, or has at some time had in his possession or power, the document or documents specified in the application, and that they relate to the matters in question in the cause or matter, or to some of them. O. 31, r. 19 a., (E).

**O. XXXI,  
rr. 19-31.**

**19.** If the party from whom discovery of any kind or inspection is sought, objects to the same, or any part thereof, the Court or a Judge may, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the cause or matter, or that for any other reason it is desirable that any issue or question in dispute in the cause or matter should be determined before deciding upon the right to the discovery or inspection, order that such issue or question be determined first, and reserve the question as to the discovery or inspection. O. 31, r. 20, (E).

<sup>288</sup>  
Premature  
discovery.  
[R. 472, (O)].

**20.** If any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall be liable to attachment. He shall also, if a plaintiff, be liable to have his action dismissed for want of prosecution, and, if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended, and the party interrogating may apply to the Court or a Judge for an order to that effect, and an order may be made accordingly. O. 31, r. 21, (E); C. S. 1903, c. 112, s. 79.

<sup>289</sup>  
Disobedience  
to order for  
discovery.  
[Cf. R. 473, (O)].

**21.** Service of an order for interrogatories or discovery or inspection made against any party on his solicitor shall be sufficient service to found an application for an attachment for disobedience to the order. But the party against whom the application for an attachment is made may show in answer to the application that he has had no notice or knowledge of the order. O. 31, r. 22, (E); C. S. 1903, c. 112, s. 80.

<sup>290</sup>  
Service of  
order on  
solicitor.  
[Cf. R. 474, (O)].

**O. XXXI.  
rr. 22-25.**

291  
Attachment of  
solicitor  
neglecting to  
give notice of  
order for  
discovery to  
client.  
[R. 476, (O)].

**22.** A solicitor upon whom an order against any party for interrogatories or discovery or inspection is served under the last preceding Rule, who neglects, without reasonable excuse, to give notice thereof to his client, shall be liable to attachment. O. 31, r. 23, (E).

292  
Using answers  
to interroga-  
tories at trial.  
[Cf. R. 461, (O)].

**23.** Any party may, at the trial of a cause, matter, or issue, use in evidence any one or more of the answers, or any part of an answer of the opposite party to interrogatories without putting in the others or the whole of such answer; provided always, that in such case the Judge may look at the whole of the answers, and, if he shall be of the opinion that any others of them are so connected with those put in, that the last-mentioned answers ought not to be used without them, he may direct them to be put in. O. 31, r. 24, (E).

293  
Discovery  
against  
sheriff.

**24.** In any action against or by a sheriff in respect of any matters connected with the execution of his office, the Court or a Judge may, on the application of either party, order that the affidavit to be made in answer either to interrogatories or to an order for discovery shall be made by the officer actually concerned. O. 31, r. 28, (E).

294  
Order to apply  
to infants.

**25.** This Order shall apply to infant plaintiffs and defendants, and to their next friends and guardians *ad litem*. O. 31, r. 29, (E).

**O. XXXII.  
rr. 1, 2.****ORDER XXXII.**

## ADMISSIONS.

295  
Admission of  
statements of  
opponent.  
[Cf. R. 269, (O)].

**1.** Any party to a cause or matter may give notice, by his pleading, or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party. O. 32, r. 1, (E).

296  
Notice to  
admit docu-  
ments.  
[Cf. RR. 527,  
1150, (O)].  
Costs of  
refusal or  
neglect to  
admit.

**2.** Either party may call upon the other party to admit any document, saving all just exceptions; and in case of refusal or neglect to admit after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the cause or matter may be, unless at the trial or hearing the Court or a Judge shall certify that the refusal to admit was reasonable. O. 32, r. 2, (E), *am.*; C. S. 1903, c. 112, s. 81.

3. A notice to admit documents shall be in the Form No. 11, in Appendix B., with such variations as circumstances may require. O. 32, r. 3, (E).

**O. XXXII,  
rr. 3-7.**

<sup>297</sup>  
Form of notice  
to admit.  
[Cf. R. 527, (O)]

4. Any party may, by notice in writing, at any time not later than nine days before the day for which notice of trial has been given, call on any other party to admit, for the purposes of the cause, matter, or issue only, any specific fact or facts mentioned in such notice. And in case of refusal or neglect to admit the same within six days after service of such notice or within such further time as may be allowed by the Court or a Judge, the costs of proving such fact or facts shall be paid by the party so neglecting or refusing, whatever the result of the cause, matter, or issue may be, unless at the trial or hearing the Court or Judge certify that the refusal to admit was reasonable, or unless the Court or Judge shall at any time otherwise order or direct. Provided that any admission made in pursuance of such notice is to be deemed to be made only for the purposes of the particular cause, matter, or issue, and not as an admission to be used against the party on any other occasion or in favor of any person other than the party giving the notice; provided also, that the Court or a Judge may at any time allow any party to amend or withdraw any admission so made on such terms as may be just. O. 32, r. 4, (E); C. S. 1903, c. 112, s. 82.

<sup>298</sup>  
Notice to  
admit facts.

Costs of  
refusal or  
neglect to  
admit.  
[Cf. R. 1149, (O)]

5. A notice to admit facts shall be in the Form No. 12, in Appendix B., and admissions of facts shall be in the Form No. 13, in Appendix B., with such variations as circumstances may require. O. 32, r. 5, (E).

<sup>299</sup>  
Form of notice  
of admissions.

6. Any party may at any stage of a cause or matter, where admissions of fact have been made, either on the pleadings, or otherwise, apply to the Court or a Judge for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties; and the Court or a Judge may upon such application make such order, or give such judgment, as the Court or Judge may think just. O. 32, r. 6, (E).

<sup>300</sup>  
Judgment or  
order upon  
admissions of  
facts.  
[Cf. R. 616, (O)]

7. It shall be sufficient if admissions are signed by the solicitor of the party by whom, or on whose behalf, they purport to be made. R. 528, (O).

<sup>301</sup>  
Sufficient  
if admissions  
signed by  
solicitor.  
[Cf. O. 32, r. 7,  
(E)]

**O. XXXII,  
rr. 4, 5.**

302  
Notice to  
produce  
documents.  
[Cf. R. 489, (O)].  
Evidence of  
service of  
notice to  
produce.  
[Cf. R. 487, (O)].

**8.** Notice to produce documents shall be in the Form No 14 in Appendix B., with such variations as circumstances may require. An affidavit of the solicitor, or his clerk, of the service of any notice to produce, and of the time when it was served, with a copy of the notice to produce, shall in all cases be sufficient evidence of the service of the notice, and of the time when it was served. O. 32, r. 8, (E).

303  
Costs of  
notice where  
documents  
unnecessary.

**9.** If a notice to admit or produce comprises documents which are not necessary, the costs occasioned thereby shall be borne by the party giving such notice. O. 32, r. 9, (E).

**O. XXXIII,  
rr. 1-3.**

**ORDER XXXIII.**

**ISSUES, ACCOUNTS AND REFERENCES.**

304  
Settlement of  
issues.  
[R. 376, (O)].

**1.** Where in any cause or matter it appears to the Court or a Judge that the issues of fact in dispute are not sufficiently defined, the parties may be directed to prepare issues, and such issues shall, if the parties differ, be settled by the Court or a Judge. O. 33, r. 1, (E).

305  
Direction as  
to inquiries or  
accounts.  
[R. 646, (O)].

**2.** The Court or a Judge may, at any stage of the proceedings in a cause or matter, direct any necessary inquiries or accounts to be made or taken, notwithstanding that it may appear that there is some special or further relief sought for or some special issue to be tried, as to which it may be proper that the cause or matter should proceed in the ordinary manner. O. 33, r. 2, (E). See C. S. 1903, c. 112, s. 95.

306  
Inquiries, etc.,  
to be before  
official  
Referees.

**3.—(1)** Subject to the provisions of the following sub-Rules, all inquiries, accounts, sales, references and duties which have been heretofore or could be prosecuted, taken, made, carried out, or performed by or referred to a Referee in Equity or other person specially named or appointed by the Supreme Court in Equity or a Judge therein, shall be prosecuted, taken, made, carried out, or performed by or referred to one of the Referees named in the principal Act: the said Referees shall have respectively all and the like rights, privileges, jurisdiction and authority which were at the commencement of these Rules vested in said Referees in Equity and the course of practice and proceeding before such Referees shall, subject to said principal Act and these Rules, continue as heretofore; the duties of an examiner shall in all

Jurisdiction  
of official  
Referees.

cases be performed by the said Referees respectively, who shall have the same power, jurisdiction and authority in respect thereto as heretofore. C. S. 1903, c. 112, s. 168 (1), *am.* O. XXXIII,  
PP. 4-6.

(2) Nothing in the preceding sub-Rule or in Rule 7 shall be deemed to override or affect the provisions of section 5 of Chapter 92 of the Consolidated Statutes, 1903. Proviso.

(3) Nothing in this Rule contained shall prevent the Court or a Judge from disposing of all matters without a reference, and they or he may direct the proceedings to be taken in the Court or in Chambers. Court may  
dispose of  
matters with-  
out reference.  
[Cf. R. 656.(O)].

4. A reference may be made by the Court or a Judge on the application of either party to a Referee for any inquiry or other purposes. C. S. 1903, c. 112, s. 167. 307  
Reference on  
application of  
either party.

5. All matters referred to the said Referees shall be distributed among them by the proper officer, who shall nominate and select them, having regard in such nomination and selection to the interest and convenience of the parties, and to the locality of any lands being the subject-matter of any reference, and, subject to the foregoing provisions, as near as may be, according to regular and just rotation. The said proper officer shall indorse upon every judgment or order and upon any order of reference made by the Court or a Judge upon production of the latter to him, the name of the Referee to perform the duties (if any) referred thereunder, and such indorsement shall have the same effect as if the name of such Referee had been inserted in such judgment or order; provided that it shall be lawful for the Court or a Judge on the application on motion or petition of a party to any cause or matter, on good cause shown, to direct or transfer a reference to any one of the said Referees other than the one named by the said officer regard being also had in making such change, to the convenience of parties and locality of lands as above. C. S. 1903, c. 112, s. 169, *am.* 308  
Distribution  
of business  
among official  
Referees.  
[Cf. O. 36, r. 45.  
(E)].

6. Where the interests and convenience of the parties or the locality of the lands, the subject-matter of the reference, render it desirable to do so, or where from the absence or inability of the Referees appointed for the county from any cause to attend to any reference, or where no such Referees have been appointed for any county, or being appointed, have 309  
Selection of  
Referee in  
county other  
than where  
land lies, etc.



**●. XXXIII.**  
**rr. 7-10.**

or either of them has omitted to give the security required by the principal Act, the proper officer, in distributing the references under these Rules, may select a Referee from some other county than that in which the land, the subject-matter of the reference, is situated, or in which the parties to such reference or their witnesses may reside; due regard being had in making such selection to the interest and convenience of the parties interested in any such reference, and to the saving of unnecessary expense. C. S. 1903, c. 112, s. 170.

**310**  
Receiver to be  
appointed  
from Referees.  
[See O. 47,  
post].

**7.** In any cause, matter or proceeding in which it is deemed advisable to appoint a receiver, it shall be the duty of the Court or Judge to appoint, and such Court or Judge is hereby limited in such appointments to one of the said Referees. C. S. 1903, c. 112, s. 171.

**311**  
Power to  
Court or  
Referee to  
obtain assist-  
ance of  
experts.  
[Cf. O. 55, r. 19,  
(E)].

**8.** It shall be lawful for the Court or a Judge or any Referee, on the order of the said Court or Judge, to obtain the assistance of accountants, merchants, engineers, surveyors, actuaries, or other skilled persons, the better to enable such Court, Judge, or Referee to determine any matter in issue in any cause, proceeding or inquiry, whose remuneration shall not exceed the sum of five dollars for each day they are employed, in addition to their travelling expenses, to be paid on the order of the Court or Judge, and taxed as costs in the cause or proceeding. C. S. 1903, c. 112, s. 172.

**312**  
Fees of  
Referee.

**10.** The fees to be taken by a Referee shall in all cases be those provided by the table of fees appended to these Rules, and all such fees shall be subject to taxation by the proper officer, and his taxation shall be subject to review by the Court or a Judge. C. S. 1903, c. 112, s. 173, *am.*

**313**  
Notice by  
Referee to  
parties inter-  
ested in  
reference.

Proceeding  
with reference  
[Cf. R. 664.(O)].

**10.** Unless otherwise directed by the Court or a Judge, notice shall be given by the Referee of the first proceeding before him on the reference to every party affected by or interested in the inquiry. No summons or warrant shall be issued by any Referee on a reference other than to require the parties to proceed, which they shall do forthwith, if required by the Referee, with power of adjournment, and, on omission to adjourn, with power to proceed on notifying the parties. C. S. 1903, c. 112, s. 174, *am.*

11. If the party obtaining a judgment or order directing a reference, shall not within one month from the time of settling the same, proceed therewith before the Referee named therein, or if any unnecessary delay take place on any reference, either party, or the Referee, may be ordered by the Court or a Judge on good cause shown, peremptorily to proceed with the same, on such pain of dismissal of the cause, or excluding further proof, or payment of costs, or ordering the return of the Referee's proceedings and a new reference, as they or he may deem right. C. S. 1903, c. 112, s. 175.

O. XXXIII,  
rr. 11-14.

314  
Delay in proceeding with reference.  
[Cf. R. 663, (O); O. 33, r. 9, (E)].

12. No interrogatories shall be filed on a reference, or the like, but the examination shall always be *viva voce* by question and answer, unless directed by the Court or a Judge to be upon interrogatories. C. S. 1903, c. 112, s. 175, *am.* See O. 58, r. 32, *post.*

315  
*Viva voce* examination on reference.

13. Accounting parties shall in all cases, unless the Court or a Judge shall otherwise direct, file with the Referee, at a time to be named by him, a debtor and creditor account, verified by affidavit. The items on each side of the account shall be numbered consecutively, and the account shall be referred to by the affidavit as an exhibit, and shall not be annexed thereto. The plaintiff may supply by additional account and proof any omissions of the defendant. Any omissions may also be supplied by the defendant. Each party may be examined on oath for or against his own or the opposite party's account. The books or writings of either party, or of any person or party represented by him, or under whom he claims, may also be used in evidence for or against the party producing them, the Referee reporting as to the nature of the evidence, when objected to, and the credit due to it. Such books or writings, when so used in evidence, shall be evidence to be used before the Court or Judge, in the same manner as any other evidence taken in the same cause. The Court or Judge may direct that in taking accounts the books of account in which the accounts required to be taken have been kept shall be taken as *prima facie* evidence of the truth of the matters therein contained. C. S. 1903, c. 112, s. 177, *am.*; O. 33, rr. 3, 4., (E); RR. 673, 674, (O).

316  
Form of accounts by accounting party.

Evidence by books or writings.

14. Any party seeking to charge any accounting party beyond what he has by his account admitted to have received

317  
Surcharge.  
[Cf. C. S. 1903, c. 112, s. 178].

**O. XXXIII, rr. 15-16.** shall give notice thereof to the accounting party, stating, so far as he is able, the amount sought to be charged and the particulars thereof in a short and succinct manner O. 33, r. 5, (E); R. 680, (O).

**318**  
Inquiry as to  
outstanding  
personal  
estate.

**15.** Every judgment or order for a general account of the personal estate of a testator or intestate, shall contain a direction for an inquiry what parts (if any) of such personal estate are outstanding or undisposed of, unless the Court or a Judge otherwise directs. O 33, r. 6, (E).

**319**  
Just allow-  
ances.  
[Cf. R. 667, (O)].

**16.** In taking any account directed by any judgment or order, all just allowances shall be made without any direction for that purpose. O. 33, r. 8, (E).

**320**  
Objections  
before  
Referee.

**17.** All objections on a reference shall be made and argued at the time of presenting the proof, unless postponed for further consideration, and when decided, shall be briefly noted in the Referee's report, and no exception grounded thereon shall afterwards be filed with him or argued. C. S. 1903, c. 112, s. 179.

**321**  
Notice to  
attend on  
settlement of  
report.

**18.** Six days' notice shall be given by a Referee to the parties to attend on the settlement of his report, and no notice of signing the same shall be requisite. Exceptions to the report shall be filed, and a copy thereof delivered to the opposite party within fourteen days after the settlement thereof; and if the parties cannot agree upon the evidence from which any objection may arise, the Referee shall furnish a copy thereof to the party requiring the same on being paid for the same at the rate of five cents per folio, or he may be compelled so to do on the order of a Judge. On application to the Court or a Judge on motion or petition to confirm the report, or upon fourteen days' notice to the opposite party by the party excepting, the exceptions shall be heard and decided without reference back to the Referee, unless the case requires further investigation by him; but in no case shall a reference back to the Referee be ordered when the defective matter can be supplied by direct investigation of the Court or Judge. C. S. 1903, c. 112, s. 180.

Exceptions to  
report.

**322**  
Attendance of  
witnesses  
before  
Referee, etc.  
[See O. 35, r. 31,  
and O. 68, r.  
33, *post*].

**19.** The solicitors of the parties may issue subpoenas for attendance of any witnesses with or without the production of writings, before any Referee authorized to take any ex-

amination without an authority from him, on being signed and sealed by the proper officer; and for any disobedience of any witness thereto, or for refusing to answer lawful questions before the Referee, the Court or a Judge may grant an attachment against such witness, and unless good cause be shown, may order him to be committed on such attachment, or make such other order as may be reasonable. C. S. 1903, c. 112, s. 181, *am.*

**O. XXXIII.  
rr. 20-25.**

**20.** No part of any state of facts, charge, affidavit, deposition, examination or answer brought in or used before any Referee or other officer, shall be stated or recited in his report, but shall be identified, specified and referred to, so as to inform the Court or a Judge what state of facts, charge, affidavit, deposition, examination or answer was so brought in or used. C. S. 1903, c. 112, s. 182, *am.*

**323**  
Evidence, etc.,  
not to be  
recited in  
Referee's  
report.

**21.** When it shall be referred to a Referee to take an account of the amount due upon any mortgage, the Referee shall annex to his report, and therein refer to, a statement showing the manner in which the amount reported to be due is made up and ascertained, which statement shall be deemed and taken to be a part of the report. C. S. 1903, c. 112, s. 183.

**324**  
Mortgage  
account.  
[See O. 58, r. 34,  
*post*].

**22.** A Referee shall not recite in his report the order of reference or any part thereof, but he shall attach his report to the order or copy thereof served on him and refer briefly to the same in his report, which shall be delivered to the party entitled to receive the same. C. S. 1903, c. 112, s. 184.

**325**  
Order of  
reference to be  
attached to  
report.

**23.** A petition for the confirmation of the report of a Referee shall refer shortly to the order of reference and state the fact and date of the making of such report, without reciting the particulars thereof. C. S. 1903, c. 112, s. 185.

**326**  
Petition to  
confirm  
report.

**24.** A Referee shall keep in his office a book in which upon the bringing in of a judgment or order of reference, he shall enter the title of the cause or matter, the name of the solicitor prosecuting the reference, the date of the judgment or order being brought in, and the proceedings taken before him.

**327**  
Record to be  
kept by  
Referee.

**25.** Such rules of Order 58 as are not inconsistent with the foregoing rules, and are applicable thereto or therewith, shall be read with this order.

Rules of O. 58.

**O. XXXIV,**  
**rr. 1-4.**

**ORDER XXXIV.**

**1. SPECIAL CASE.**

<sup>328</sup>  
Special case  
by consent.  
[Cf. R. 372 (1),  
(O)].

[Cf. R. 372 (3),  
(O)].

1. The parties, after the writ of summons has been issued in any cause or matter, or in any pending matter not commenced by writ, may concur in stating the questions of law arising therein in the form of a special case for the opinion of the Court or a Judge. Every such special case shall be divided into paragraphs numbered consecutively, and shall concisely state such facts and documents as may be necessary to enable the Court to decide the questions raised thereby. Upon the argument of such case the Court or Judge and the parties shall be at liberty to refer to the whole contents of such documents, and the Court or Judge shall be at liberty to draw from the facts and documents stated in such special case any inference, whether of fact or law, which might have been drawn therefrom if proved at a trial. O. 34, r. 1, (E), *am.*; C. S. 1903, c. 112, s. 157, *am.*

<sup>329</sup>  
Special case  
for preliminary  
question  
of law before  
trial.  
[Cf. R. 373, (O)].

2. If it appear to the Court or a Judge, that there is in any cause or matter a question of law, which it would be convenient to have decided before any evidence is given or any question or issue of fact is tried, or before any reference is directed, the Court or Judge may make an order accordingly, and may direct such question of law to be raised for the opinion of the Court either by special case or in such other manner as the Court or a Judge may deem expedient, and all such further proceedings as the decision of such question of law may render unnecessary may thereupon be stayed. O. 34, r. 2, (E), *am.*

<sup>330</sup>  
Signing and  
filing special  
case.

3. A special case shall be signed by the parties or their counsel or solicitors, and shall be filed by the plaintiff. O. 34, r. 3, (E), *am.*; R. 374, (O); C. S. 1903, c. 112, s. 158, *am.*

<sup>331</sup>  
Leave to set  
down where  
persons under  
disability.  
[R. 375, (O)].

4. No special case in any cause or matter to which a married woman (not being a party thereto in respect of her separate property or of any separate right of action by or against her), infant, or person of unsound mind not so found by inquisition is a party, shall be set down for argument without leave of the Court or a Judge, the application for which must be supported by sufficient evidence that the statements con-

tained in such special case, so far as the same affect the interest of such married woman, infant, or person of unsound mind, are true. O. 34, r. 4, (E); C. S. 1903, c. 112, s. 160, *am.*

Q. XXXIV,  
rr. 5-10.

5. Either party may enter a special case for argument by delivering to the proper officer a memorandum of entry, in the usual form, and also if any married woman, infant, or person of unsound mind not so found by inquisition be a party to the cause or matter, producing a copy of the order giving leave to enter the same for argument. O. 34, r. 5, (E).

332  
Entry for  
argument.

6. The parties to a special case may agree in writing, that, on the judgment of the Court or Judge being given in the affirmative or negative of the questions of law raised by the special case, certain specific relief may be awarded, or that a sum of money, fixed by the parties, or to be ascertained by the Court or Judge, or in such manner as the Court or Judge may direct, shall be paid by one of the parties to the other of them either with or without costs of the cause or matter; and the judgment of the Court or Judge may be entered for such relief or for the sum so agreed or ascertained, with or without costs, as the case may be, and execution may issue upon such judgment forthwith, unless otherwise agreed, or unless stayed on appeal. O. 34, r. 6, (E), *am.*; R 372 (2), (O), *am.*

333  
Agreement as  
to relief, etc.

7. Whenever a special case shall be set down for hearing before a Judge, it shall be lawful for him, in his discretion, to refer such case to the Court of Appeal and to order the same to be entered upon the docket of the sittings next following, and the case shall be entered on such docket in pursuance of such order. C. S. 1903, c. 112, s. 164, *am.*

334  
Reference by  
Judge of  
special case, to  
Court of  
Appeal.

8. The Court of Appeal, on the hearing of such case, shall have the same right to refer to documents, and to draw inferences from the facts and documents stated in such case as the Court or Judge has under Rule 1 of this Order. C. S. 1903, c. 112, s. 165.

335  
Reference by  
Court of  
Appeal to  
documents,  
etc.

9. The Court of Appeal may, on the hearing of such case, make such declaration, order or judgment as the Judge could have made, and such declaration, order or judgment may be enforced in all respects as if it had been made by said Judge. C. S. 1903, c. 112, s. 166, *am.*

336  
Powers of  
Court of  
Appeal.

10. This Order shall apply to every special case stated in a cause or matter, or in any proceeding incidental thereto O. 34, r. 7, (E).

337  
Application  
of Order.

**O. XXXIV.**  
**rr. 11-14.**

**2.—ISSUES OF FACT WITHOUT PLEADINGS.**

<sup>338</sup>  
Trial of  
questions of  
fact agreed  
upon.

**11.** When the parties to a cause or matter are agreed as to the questions of fact to be decided between them, they may, after writ issued and before judgment, by consent and order of the Court or a Judge, proceed to the trial of any such questions of fact without formal pleadings; and such questions may be stated for trial in an issue in the Form No. 15, in Appendix B., with such variations as circumstances may require, and such issue may be entered for trial and tried in the same manner as any issue joined in an ordinary action, and the proceedings shall be under the control and jurisdiction of the Court or Judge, in the same way as the proceedings in an action. O. 34, r. 9, (E).

<sup>339</sup>  
Order for pay-  
ment of  
money.

**12.** The Court or a Judge may, by consent of the parties order that, upon the finding in the affirmative or negative of such issue as in the last preceding rule mentioned, a sum of money, fixed by the parties, or to be ascertained upon a question inserted in the issue for that purpose, shall be paid by one of the parties to the other of them either with or without the costs of the cause or matter. O. 34, r. 10, (E).

<sup>340</sup>  
Entry of  
judgment  
upon finding.

**13.** Upon the finding on any such issue, as in Rule 11 mentioned, judgment may be entered for the sum so agreed or ascertained as aforesaid, with or without costs, as the case may be, and execution may issue upon such judgment forthwith, unless otherwise agreed, or unless the Court or a Judge shall otherwise order for the purpose of giving either party an opportunity for moving to set aside the finding or for a new trial. O. 34, r. 11, (E).

<sup>341</sup>  
Record of  
proceedings.

**14.** The proceedings upon such issue, as in Rule 11 mentioned, may be recorded at the instance of either party, and the judgment, whether actually recorded or not, shall have the same effect as any other judgment in a contested action. O. 34, r. 12, (E).

**O. XXXV.**  
**r. 1.**

**ORDER XXXV.**

**TRIAL.**

**1.—Place.**

<sup>342</sup>  
Place of trial  
in each action  
to be fixed by  
Judge.  
[Cf. R. 529, (O)].

**1.** There shall be no local venue for the trial of any action, but in every action the place of trial shall be fixed by the Court or a Judge, either under the summons for directions or on the application of either party upon summons and notice to the opposite party. O. 36, r. 1, (E), *am.*

II.—*Notice and Entry of Trial.*O. XXXV.  
PT. 2—8.

2. Notice of trial may be given in any cause or matter by the plaintiff or other party in the position of plaintiff. Such notice may be given with the reply (if any) whether it closes the pleadings or not, or at any time after the issues of fact are ready for trial. O. 36, r. 11, (E), without amendment in R. S. C. July, 1903, r. 5.

3. If the plaintiff does not, within six weeks after the close of the pleadings, or within such extended time as the Court or a Judge may allow, give notice of trial, the defendant may, before notice of trial given by the plaintiff, give notice of trial, or may apply to the Court or Judge to dismiss the action for want of prosecution; and on the hearing of such application, the Court or a Judge may order the action to be dismissed accordingly, or may make such other order, and on such terms, as to the Court or Judge may seem just. O. 36, r. 12, (E), without amendment in R. S. C. July, 1903, r. 6.

4. Notice of trial shall state whether it is for the trial of the cause or matter, or of issues therein; and the place and day for which it is to be entered for trial. It shall be in the Form No. 16, in Appendix B., Part II., with such variations as circumstances may require. O. 36, r. 13, (E).

5. Ten days' notice of trial shall be given, unless the party to whom it is given has consented, or is under terms, or has been ordered to take short notice of trial; and shall be sufficient in all cases, unless otherwise ordered by the Court or a Judge. Short notice of trial shall be five days' notice, unless otherwise ordered. O. 36, r. 14, (E), *am.*

6. Notice of trial shall be given before entering the trial; and the trial may be entered notwithstanding that the pleadings are not closed, provided that notice of trial has been given. O. 36, r. 15, (E).

7. Notice of trial shall be deemed to be for the first day of the then next sittings at the place for which notice of trial is given. O. 36, r. 18, (E), *am.*

8. No notice of countermand of trial shall be deemed sufficient to save the costs for not proceeding to trial pursuant to notice, unless it be given at least six days before the time of the intended trial. R. 2, S. C., H. T. 1828, *am.* See O. 36, r. 19, (E).



**9. XXXV.**  
**rr. 9-15.**  
350  
Either party  
may enter  
action for  
trial.  
[Cf. O. 36, r. 20,  
(E)].

**9.** After notice of trial is given, either party may enter the action for trial. If both parties enter the action for trial at the same sitting, it shall be tried in the order of the plaintiff's entry. R. 538 c., (O).

351  
When action  
to be entered.

**10.** Actions shall be entered for trial not later than six days next before the first day of the sittings, but the trial Judge may permit any action to be entered after the time above limited. R. 538 d., (O).

### III.—*Papers for Judge.*

352  
Record.

**11.** The party entering an action for trial shall, at the time of entry, deliver to the proper officer one copy of the whole of the pleadings in the action for the use of the Judge at the trial, and such copy shall be called the Record. R. 539, (O); O. 36, r. 30, (E), *am.*

### IV.—*Proceedings at Trial.*

353  
Default of  
appearance by  
defendant at  
trial.  
[R. 545, (O)].

**12.** If, when a trial is called on, the plaintiff appears, and the defendant does not appear, the plaintiff may prove his claim, so far as the burden of proof lies upon him. O. 36, r. 31, (E).

354  
Default of  
appearance by  
plaintiff.  
[R. 546, (O)].

**13.** If, when a trial is called on, the defendant appears, and the plaintiff does not appear, the defendant, if he has no counterclaim, shall be entitled to judgment dismissing the action, but, if he has a counterclaim, then he may prove such counterclaim so far as the burden of proof lies upon him. O. 36, r. 32, (E).

355  
Setting aside  
judgment by  
default.  
[Cf. R. 778, (O)].

**14.** Any verdict or judgment obtained where one party does not appear at the trial may be set aside by the Court of Appeal or by a Judge in Court, or by a Judge at the sittings, upon such terms as may seem fit, upon an application made within six days after the trial. O. 36, r. 33, *am.*

356  
Adjournment  
of trial.  
[Cf. R.R. 553,  
780, (O)].

**15.** The Judge may postpone or adjourn a trial for such time, and to such place, and upon such terms, if any, as he shall think fit, and he may, at or after the trial, direct that judgment be entered, or may adjourn the case for further consideration. R. 554. (O.); O. 36, r. 34, *am.*

16. Where a party is brought up to attend the trial or hearing of a cause or matter by virtue of any writ of *habeas corpus* duly issued, and by reason of the pressure of other business, or from any other cause, the trial or hearing of the cause or matter in which such party is concerned is postponed to a future day, a new writ of *habeas corpus* may be issued for such future day, if the Court or a Judge shall so direct, without payment of any fee. O. 36, r. 35, (E).

357  
Costs of  
*habeas corpus*  
to bring up party  
to attend trial,  
where ad-  
journalment.

17. The Judge at the trial shall, at the request of either party, order a witness to be excluded from the Court until he is called to give evidence, and also, if the Judge deems it expedient, a party intending to give evidence; or he may require such party to be examined before the other witnesses on his behalf. Any such witness or party who does not conform to such order shall be liable to be punished as to the Judge may seem just, and the Judge may, in his discretion, exclude the testimony of any witness or party who does not conform to such order. R. 547, (O).

358  
Exclusion of  
witnesses.

18. Upon a trial with a jury, the addresses to the jury shall be regulated as follows: the party who begins, or his counsel, shall be allowed at the close of his case, if his opponent does not announce any intention to adduce evidence, to address the jury a second time for the purpose of summing up the evidence, and the opposite party, or his counsel, shall be allowed to open his case, and also to sum up the evidence, if any, and the right to reply shall be the same as heretofore. O. 36, r. 36, (E).

359  
Addresses to  
jury.  
(Cf. R. 548, (O)).

19. In actions for libel or slander, in which the defendant does not by his defence assert the truth of the statement complained of, the defendant shall not be entitled on the trial to give evidence in chief, with a view to mitigation of damages, as to the circumstances under which the libel or slander was published or as to the character of the plaintiff, without the leave of the Judge, unless seven days at least before the trial he furnishes particulars to the plaintiff of the matters as to which he intends to give evidence. O. 36, r. 37, (E).

360  
Evidence in  
mitigation of  
damages in  
action for libel  
or slander.  
R. 438, (O)].

20. The Judge may in all cases disallow any questions put in cross-examination of any party or other witness which

361  
Disallowance  
of vexatious  
questions in  
cross-examin-  
ation.

**O. XXXV.**  
**rr. 31-36.**

may appear to him to be vexatious, and not relevant to any matter proper to be inquired into in the cause or matter. O. 36, r. 38, (E).

<sup>302</sup>  
Entry of  
judgment at  
or after trial.  
[R. 554, (O)].

**21.** The Judge shall, at or after the trial, direct judgment to be entered as he shall deem right, and no motion for judgment shall be necessary in order to obtain such judgment. O. 36, r. 39, (E).

<sup>363</sup>  
Clerk to note  
times of com-  
mencement  
and termina-  
tion of trial.

**22.** The officer or clerk present at any hearing or trial shall make a note of the times at which such hearing or trial shall commence and terminate respectively, on each day on which the same shall take place. O. 36, r. 40, (E), *am.*

<sup>364</sup>  
Clerk to enter  
findings of  
fact, etc.  
[R. 558, (O)].

**23.** Upon every trial the officer or clerk attending the trial shall enter all such findings of fact as the Judge may direct to be entered, and the directions, if any, of the Judge as to judgment, in a book to be kept for the purpose. O. 36, r. 41, (E).

<sup>365</sup>  
Certificate for  
entry of  
judgment.  
[R. 559, (O)].

**24.** If the Judge shall direct that any judgment be entered for any party absolutely, the certificate of the said officer to that effect shall be a sufficient authority to the proper officer to enter judgment accordingly. The certificate shall be in the Form No. 17, in Appendix B., with such variations as circumstances may require. O. 36, r. 42, (E), *am.*

#### V.—*Writ of Inquiry and Reference as to Damages.*

<sup>366</sup>  
Application of  
Rules.

**25.** The provisions of Rules 5, 6, 8, 15, 16, 18, 19 of this Order shall, with the necessary modifications, apply to an inquiry pursuant to a writ of inquiry. O. 36, r. 56, (E).

<sup>367</sup>  
Ascertain-  
ment of  
damages  
where a  
matter of  
calculation.

**26.** In every action or proceeding in which it shall appear to the Court or a Judge that the amount of damages sought to be recovered is substantially a matter of calculation, it shall not be necessary to issue a writ of inquiry, but the Court or a Judge may ascertain or assess the same, or he may direct that the amount for which final judgment is to be entered shall be ascertained by an officer of the Court and the attendance of witnesses, and the production of documents before such officer may be compelled by subpoena, and such officer may adjourn the inquiry from time to time, and shall indorse upon the order for referring the amount of damages to him, the amount found by him, and shall deliver the

order with such indorsement to the person entitled to the damages, and such and the like proceedings may thereupon be had as to taxation of costs, entering judgment, and otherwise, as upon the finding of a jury upon a writ of inquiry. O. 36, r. 57, (E), *am.*

●. XXXV.  
FR. 27-31.

27. The direction in Rule 26 mentioned may be made to any one of the Referees, in rotation, or to any one of the sheriffs; and in such case the powers given by the said rule to the officer of the Court therein mentioned, shall be exercised by such Referee or sheriff; and the provisions of the Rules, as to the distribution of business among the Referees, shall apply to directions given under Rule 26. O. 36, r. 57a., (E), *am.*

368  
Ascertainment of damages by official Referee or sheriff.

28. Where no appearance has been entered for the defendant, and he has no known place of abode within the Province, a writ of inquiry to assess damages may be executed without notice thereof to him. C. S. 1903, c. 111, s. 170, *part.*

369  
Assessment on writ of inquiry without notice where no appearance.

29. Damages in respect of any continuing cause of action shall be assessed down to the time of assessment. O. 36, r. 58, (E), *am.*; r. 552, (O).

370  
Damages in respect of continuing cause of action.

#### VI.—Referees.

30. In every cause or matter, except where under the principal Act a trial with a jury is required, or any of the parties has served notices for a jury, under and in accordance with the provisions of section 29 of said Act, the Court or Judge may at any time order any cause, matter, or issue, to be tried by an official referee or special referee. Upon any cause or matter, or any question in any cause or matter, being referred to a referee, he may, subject to the order of the Court or a Judge, hold the trial at or adjourn it to any place which he may deem most convenient, and have any inspection or view which he may deem expedient for the better disposal of the controversy before him. He shall, unless otherwise directed by the Court or a Judge, proceed with the trial *de die in diem*, in a similar manner as in actions tried with a jury. O. 36, r. 48, (E), *am.*

371  
Trial before Referee.  
[Cf. R. 649, (O)].

31. Subject to any order to be made by the Court or Judge ordering the same, evidence shall be taken at any trial before a referee, and the attendance of witnesses may be enforced by *subpœna*, and every such trial shall be conducted

372  
Conduct of trial.  
[Cf. R. 648 (1), (O)].

**Q. XXXV.  
FF. 32-34.**

<sup>373</sup>  
Authority of  
Referee.  
[Cf. R. 648 (1).  
(O)].

in the same manner, as nearly as circumstances will admit, as trials are conducted before a Judge. O. 36, r. 49, (E).

**32.** Subject to any such order as last aforesaid, the referee shall have the same authority with respect to discovery and production of documents, and in the conduct of any reference or trial, and the same power to direct that judgment be entered for any or either party as a Judge of the Court. A party may move the Judge by whom the order of reference was made to set aside such judgment, and to enter any other judgment, on the ground that upon the finding as entered the judgment is wrong. O. 36, r. 50; O. 40, r. 6, (E), *am.*

<sup>374</sup>  
Referee not to  
commit or  
attach.  
[Cf. R. 648 (1).  
(O)].

**33.** Nothing in these Rules contained shall authorize any referee to commit any person to prison, or to enforce any order by attachment or otherwise. O. 36, r. 51, (E).

<sup>375</sup>  
Referee may  
submit  
question to  
Court or  
Judge.  
[Cf. R. 651, (O)].

**34.** The referee may, before the conclusion of any trial before him, or by his report under the reference made to him, submit any question arising therein for the decision of the Court or Judge, or state any facts specially, with power to the Court to draw inferences therefrom, and in any such case the order to be made on such submission or statement shall be entered as the Court may direct; and the Court shall have power to require any explanation or reasons from the referee, and to remit the cause or matter, or any part thereof, for re-trial or further consideration to the same or any other referee; or the Court may decide the question referred to any referee on the evidence taken before him, either with or without additional evidence, as the Court may direct. O. 36, r. 52, (E).

Court may  
remit cause to  
Referee or  
decide it.  
[Cf. R. 652, (O)].

<sup>376</sup>  
Application of  
Rules 31-34 to  
Official  
Referee.

**35.** The preceding Rules 31 to 34 shall apply where applicable and not inconsistent with the Rules of Order XXXIII., where any cause or matter, or any question or issue of fact, is referred to an official referee. O. 36, r. 52a., (E).

<sup>377</sup>  
Adoption or  
variation of  
report of  
Referee under  
O. 64, r. 13.

**36.** Where under Rule 13 of Order 64, the report of the referee has been made in a cause or matter, the further consideration of which has been adjourned, it shall be lawful for any party, on the hearing of such further consideration, without notice of motion or summons, to apply to the Court or Judge to adopt the report, or without leave of the Court or a Judge to give not less than four days' notice of motion, to come on with the further consideration, to vary the report, or to remit the cause or matter, or any part thereof, for re-hear-

ing or further consideration to the same or any other referee. **O. XXXV, r. 37-39.**  
O. 36, r. 54, (E).

**37.** Where under Rule 13 of Order 64 the report of the referee has been made in a cause or matter, the further consideration of which has not been adjourned, it shall be lawful for any party by an eight days' notice of motion to apply to the Court to adopt and carry into effect the report of the referee, or to vary the report, or to remit the cause or matter or any part thereof for re-hearing or further consideration to the same or any other referee. O. 36, r. 55, (E).

**38.** Where the whole of any cause or matter is referred to an official Referee under an order of Court, he may, subject to any directions in the order, exercise the same discretion as to costs as the Court or a Judge could have exercised. O. 36, r. 55b., (E).

**39.** The provisions of the preceding Rules 30 to 38 shall apply, where any cause or matter, or any question or issue of fact therein, is referred to an officer of the Court, or to a special referee or arbitrator. Provided that where the arbitrator is appointed otherwise than by an order of the Court, the provisions of Rule 30 as to sitting *de die in diem* shall not apply. O. 36, r. 55c., (E). See O. 40, r. 6a., (E).

## ORDER XXXVI.

**O. XXXVI, r. 1.**

### 1.—Evidence Generally.

**1.** In the absence of any agreement in writing between the solicitors of all parties, and subject to these Rules, the witnesses at the trial of any action, or at any assessment of damages, shall be examined *viva voce*, and in open Court, but the Court or a Judge may, at any time for sufficient reason, order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing or trial, on such conditions as the Court or Judge may think reasonable, or that any witness, whose attendance in Court ought for some sufficient cause to be dispensed with, be examined by interrogatories or otherwise before a commissioner or examiner: provided that, where it appears to the Court or a Judge that the other party *bona fide* desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorising the evidence of such witness to be given by affidavit. O. 37, r. 1, (E).

**381**  
Evidence on trial to be *viva voce*.  
[Cf. R. 483.(O)].

**Affidavits.**

**Examination before commissioner.**

●. XXXVI,  
rr. 2-6.

382  
Evidence  
taken in other  
causes or  
matters.

2. An order to read evidence taken in another cause or matter shall not be necessary, but such evidence may, saving all just exceptions, be read on *ex parte* applications by leave of the Court or a Judge, to be obtained at the time of making any such application, and in any other case upon the party desiring to use such evidence giving two days' previous notice to the other parties of his intention to read such evidence. O. 37, r. 3, (E).

383  
Certified  
copies of  
documents  
admissible in  
evidence.  
[Cf. R. 496.(O)].

3. Copies of all writs, records, pleadings, and documents filed with the proper officer shall be admissible in evidence in all causes and matters, and between all persons or parties, to the same extent as the original would be admissible, where certified by such officer to be true copies of the originals. O. 37, r. 4, (E), *am.*

## II.—*Examination of Witnesses.*

384  
Examination  
before trial of  
infirm or aged  
witnesses, or  
witnesses un-  
able to travel,  
or obliged to  
leave  
Province.

4. When any of the witnesses necessary to be produced on the trial of any cause or matter, shall be infirm, aged or otherwise unable to travel, or when any witness is obliged to leave the Province, it shall and may be lawful for the Court or a Judge on due notice given to the adverse party to be present (if he sees fit), to order the examination before a Judge or any other person or persons named in such order, of such infirm or aged person or person unable to travel, or who is obliged to leave the Province. All such examinations so taken shall be certified under the hand and seal of the said Judge or other person taking the same, and closed up under the seal of the Judge or other person taking the same, indorsed with the title of the cause or matter in which the same were taken, and shall be received in evidence in such cause or matter, saving all just exceptions. C. S. 1903, c. 111, s. 262, *am.*

385  
Witness in  
Province and  
able to travel  
at time of  
trial.

5. If such witnesses shall at the time of the trial of the cause be in the Province and able to travel, they shall be required to give their testimony *viva voce* at such trial, in the same manner as if such depositions had not been taken. C. S. 1903, c. 111, s. 263.

386  
Reservation of  
exceptions.

6. All benefit of exceptions shall be reserved in the same manner as in producing witnesses for examination *viva voce* at the trial. C. S. 1903, c. 111, s. 264.

7. The Court or a Judge in any cause or matter where it shall appear necessary for the purposes of justice may make an order for the examination on oath, upon interrogatories or otherwise, before the Court or Judge, or any officer of the Court, or any other person or persons to be named in such order, of any witnesses within the Province, or order a commission to issue under the seal of the Court, for the examination of witnesses on oath at any place or places out of the Province by interrogatories or otherwise, and by the same or any subsequent order or orders, to give all such directions touching the time, place and manner of such examination, as well within the Province as without, and all other matters and circumstances connected with such examination, and may empower any party to the cause or matter to give such deposition in evidence therein, on such terms as may seem just. C. S. 1903, c. 111, s. 265, *am.*; O. 37, r. 5, (E), *am.*

387  
O. XXXVI,  
rr. 7-11.

387  
Examination  
of witnesses  
within the  
Province or  
abroad.  
[Cf. RR. 485,  
490, (O)].

8. The notice of a motion for a commission to take evidence shall state the name and address of the commissioner proposed by the applicant; and if the opposite party desires to name a commissioner, he shall, on the return of the motion, give notice to the applicant of the name and address of such commissioner; and the order may direct the issue of the commission directed to the persons so named, or to such person as may seem proper. R. 501, (O).

388  
Notice of  
motion.

9. An order for a commission to examine witnesses shall be in the Form No. 37, in Appendix K., and the writ of commission shall be in the Form No. 9, in Appendix J., with such variations as the circumstances may require. O. 37, r. 6, (E).

389  
Form of order  
for a commis-  
sion and of  
writ of com-  
mission.

10. Where the examination is to take place upon written interrogatories, the interrogatories in chief shall be delivered to the opposite party (unless otherwise ordered) at least eight days before the issue of the commission; and the cross-interrogatories shall be delivered to the opposite party (unless otherwise ordered) within four days after the receipt of the interrogatories in chief; and in default of cross-interrogatories being so delivered, the opposite party may send the commission without cross-interrogatories. R. 503, (O).

390  
Examination  
on interroga-  
tories.

11. Where notice of the execution of the commission is required to be served, forty-eight hours' notice shall be sufficient; such notice shall be in writing, stating the time and

391  
Notice of  
execution of  
commission



**O. XXXVI.**  
**rr. 12, 13.**

place of the intended examination, and shall be addressed to the person named for that purpose before the expiry of the time limited for mailing the commission, or as provided in the order; and service upon him, or upon a grown person at the address given shall be sufficient. If the name or address given proves to be illusory or fictitious, or if the party so notified fails to attend, pursuant to the notice, the commission may be executed *ex parte*. R. 504, (O).

<sup>392</sup>  
Disobedience  
by witness to  
be examined  
within  
Provinces.

**12.** When any rule or order shall be made for the examination of witnesses within the Province by authority of these Rules, the Court or Judge may, in and by the first rule or order made in the matter, or any subsequent order, command the attendance of any person to be named in such order for the purpose of being examined, or the production of any writings or other documents to be mentioned in such rule or order, and to direct the attendance of any such person, to be at his own place of abode or elsewhere, if necessary or convenient so to do; and the wilful disobedience of any such rule or order shall be deemed a contempt of Court, and proceedings may be thereupon had by attachment, if, in addition to the service of the rule or order, an appointment of the time and place of attendance in obedience thereto, signed by the Judge or person or persons appointed to take the examination, or by any one or more of such persons, shall be also served, together with or after the service of such rule or order; provided always, that the service of every such rule, order or appointment shall be by showing to the person whose attendance is required the original rule, order or appointment, and by delivering to such person a copy thereof; and also that every person whose attendance is so required shall be entitled to the like conduct money and payment for expenses, as upon attendance at a trial; provided also, that no person shall be compelled to produce, under any such rule or order, any writing or other document that he would not be compelled to produce at a trial of the cause. C. S. 1903, c. 111, s. 266, *am.*

<sup>393</sup>  
Order for  
attendance of  
person to  
produce.

**13.** The Court or a Judge may in any cause, matter or motion, at any stage of the proceedings, order the attendance of any person for the purpose of oral examination or producing of any writings or other documents named in the order

which the Court or Judge may think fit to be produced: <sup>394</sup>  
 Provided that no person shall be compelled to produce under  
 any such order any writing or other document which he could  
 not be compelled to produce at the hearing or trial. O. 37,  
 r. 7, (E); C. S. 1903, c. 112, s. 93, *am.*; C. S. 1903, c. 111,  
 s. 236, *am.*

**14.** Any person wilfully disobeying any order requiring <sup>394</sup>  
 his attendance for the purpose of being examined or producing Disobedience  
 any document, or refusing to be sworn or to answer any law- to order for  
 ful question, shall be deemed guilty of contempt of Court, attendance to  
 and may be dealt with accordingly. O. 37, rr. 8, 13, (E). See produce, etc.  
 C. S. 1903, c. 112, s. 94.

**15.** If a witness produces a book, document, letter, paper <sup>395</sup>  
 or writing, and refuses, for good cause, to be stated in his Copies as  
 deposition, to part with the original, then a copy or extract, evidence.  
 certified by the commissioner to be a true and correct copy  
 or extract, shall be annexed to the deposition of the witness.  
 R. 508, (O).

**16.**—(1) A party to a cause or matter requiring the affidavit <sup>396</sup>  
 of a person who refuses to make an affidavit, may apply to *Viva voce*  
 the Court or a Judge by summons for an order to such person examination  
 to appear and be examined upon oath before the Court or a of witness  
 Judge or a person to whom it may be most convenient to refer refusing to  
 such examination, as to the matters concerning which he has make aff-  
 refused to make an affidavit, and the Court or Judge may davit.  
 make an order for the attendance of such person for the  
 purpose of such examination and for the production of any  
 writings or documents to be mentioned in such order, and  
 may therein impose such terms as to such examination and  
 the costs of the application and proceedings thereon as shall  
 be thought fit. Such order shall be proceeded upon in like  
 manner as other orders are proceeded on, and the exam-  
 ination thereon shall be conducted and depositions taken down  
 and returned, as nearly as may be, in the mode in use in  
*viva voce* examinations. C. S. 1903, c. 111, ss. 238, 239, *am.*

(2) A person who has made an affidavit to be used in any <sup>397</sup>  
 action or proceeding, may be ordered by the Court or Judge *Cross-exami-*  
 to attend and be cross-examined thereon. R. 490, (O); O. 37, nation of  
 r. 20, (E). deponent to  
 affidavit.

**17.** It shall be lawful for any Sheriff, gaoler, or other <sup>397</sup>  
 officer having the custody of any prisoner, to take such *Habeas*  
 prisoner for examination under the authority hereof, by virtue *corpus*  
 to bring up  
 witness.

**Q. XXXVI.**  
**rr. 18-22.**

of a writ of *habeas corpus* to be issued for that purpose; which writ shall and may be issued by the Court or a Judge under such circumstances and in such manner as such Court or Judge may now by law issue the writ commonly called a writ of *habeas corpus ad testificandum*. C. S. 1903, c. 111, s. 267, *am.*

<sup>398</sup>  
Depositions to  
be under oath,  
etc.  
[Cf. O. 37, r. 19.  
(E)].

**18.** It shall be lawful to all and every person authorized to take examination of witnesses by any rule, order, or commission made or issued in pursuance hereof, and he and they are hereby authorized and required to take all such examinations upon the oath of the witnesses, or affirmation in cases where affirmation is allowed by law instead of oath, or otherwise in accordance with their religion. C. S. 1903, c. 111, s. 268, *am.*; R. 505, (O).

<sup>399</sup>  
Depositions  
may be taken  
in shorthand.

**19.** The depositions may be taken in shorthand if so provided by the order or the parties so agree. R. 509, (O).

<sup>400</sup>  
Who may take  
evidence in  
shorthand.

**20.** If the examination is to be taken in shorthand, the commissioner may take the same in shorthand or employ a shorthand writer, to be duly sworn. R. 510, (O).

<sup>401</sup>  
Depositions,  
when to be  
signed.

**21.—(1)** Unless the examination is taken in shorthand, the depositions shall be subscribed by the witness and by the commissioner.

(2) Where taken in shorthand it shall not be necessary that the depositions be read over or signed by the person examined unless any of the parties so desire.

(3) A copy of the depositions, if taken in shorthand by the commissioner and certified by him, or, if taken in shorthand by a shorthand writer employed for the purpose as aforesaid, certified by him and signed by the commissioner, shall for all purposes have the same effect as original depositions. R. 511, (O).

<sup>402</sup>  
Transmission  
of depositions  
to Court, etc.

**22.** The examinations or depositions taken under and by virtue of any such order or commission shall be certified under the hand of the Judge, commissioner or person taking the same, and shall be closed up under the seal of the Judge, commissioner or other person taking the same, and addressed to the Court and indorsed with the title of the cause or matter in which the same were taken,

and shall without proof of the signature to such certificate be received and read in evidence on the hearing of the cause, or before the Referee or officer appointed, if used on a reference, or whenever the same may be required, saving all just exceptions; provided, however, that no such examination or deposition so taken and certified shall be read in evidence without the consent of the party against whom the same may be offered unless it shall appear to the Court, Judge, Referee or officer before whom the cause or reference on which the said examination or deposition is offered is being heard, on proof by affidavit, or *viva voce*, that the examinant or deponent is out of the Province, or dead, or unable from sickness or other infirmity to attend on such hearing or reference. In the case of a witness examined out of the Province, an affidavit by the solicitor of the party on whose behalf such evidence is tendered as to his belief of the absence of such witness from the Province shall be sufficient proof. C. S. 1903, c. 112, s. 86, *am.*; O. 37, r. 18, (E), *am.*; R. 512, (O), *am.*

O. XXXVI,  
FR. 22-25,  
[R. 486, (O)].

Admissibility  
of depositions.

**23.** No objection shall be allowed to prevail against the admissibility of any evidence taken under any such commission if it appears to the Court or a Judge that the objection taken is merely technical, or is to mere matter of form, and that the evidence required to be taken has been substantially taken by the commissioner or commissioners to whom the commission is directed, or by such of them as have power to execute the same. C. S. 1903, c. 111, s. 270; C. S. 1903, c. 112, s. 87.

403  
Formal  
objections to  
admissibility  
of evidence.

**24.** The costs of every rule or order to be made for the examination of witnesses under any commission or otherwise by virtue hereof, and of the proceedings thereupon, shall be costs in the cause, unless otherwise directed, either by the Court or Judge making such rule or order, or by the Judge before whom the cause may be tried or by the Court. C. S. 1903, c. 111, s. 271, *am.*; R. 513, (1), (O).

404  
Costs.

**25.** No examinations or depositions taken under and by virtue of any order or commission shall be opened except by the order of the Court or a Judge, or by consent of the parties; but it shall be lawful for any party to any cause or matter, by order of the Court or a Judge, to inspect such examinations or depositions and take copies thereof; such

405  
Depositions  
not to be  
opened before  
trial without  
order or con-  
sent.

**O. XXXVI.  
rr. 26-31.**

order to be made upon summons, and the Court or Judge may, in such order give such directions touching the time, place and manner of inspecting such examinations and depositions, and taking copies thereof, and the attendance of the opposite party, as he may deem expedient, but in no case shall such order authorize the taking of such examinations or depositions out of the office where the same are deposited. C. S. 1903, c. 112, s. 88.

<sup>406</sup>  
Service of  
order for  
inspection.

**26.** The service of such order upon the proper officer or officer having the custody of the said examinations or depositions, shall be sufficient authority for him to open the same and to allow inspection thereof to be had and copies thereof to be taken. C. S. 1903, c. 112, s. 89.

<sup>407</sup>  
Special report  
by commis-  
sioner.

**27.** The person taking the examination of a witness under these Rules may, and if need be, shall, make a special report to the Court touching such examination, and the conduct or absence of any witness or other person thereon, and the Court or a Judge may direct such proceedings and make such order as upon the report they or he may think just. O. 37, r. 17, (E); C. S. 1903, c. 111, s. 269, *am.*

### III.—*Subpœna.*

<sup>408</sup>  
Date and issue  
of subpœna.  
[Cf. R. 478, (O).]

**28.** Writs of subpœna shall bear date upon the day when the same are issued, and shall be prepared and issued by the solicitors of the parties.

<sup>409</sup>  
Form of  
subpœna.

**29.** A writ of subpœna shall be in one of the Forms 1 to 5 in Appendix J., with such variations as circumstances may require. O. 37, r. 27, (E).

<sup>410</sup>  
Any number  
of names may  
be included in  
one subpœna.  
[Cf. R. 480, (O).]

**30.** Any number of names may be included in one subpœna, and no more than one subpœna shall be allowed on taxation of costs, unless for sufficient reason to the satisfaction of the taxing officer.

<sup>411</sup>  
Service.

**31.** The service of the subpœna shall be effected by delivering a copy of the writ, and of the indorsement thereon, and at the same time producing the original writ. O. 37, r. 32, (E).

**32.** Affidavits filed for the purpose of proving the service of a subpoena upon any defendant must state when, where, and how, and by whom, such service was effected. O. 37, r. 33, (E). <sup>412</sup>  
Affidavit of service.

**33.** The service of any subpoena shall be of no validity if not made within three months after the teste of the writ. O. 37, r. 34, (E), *am.* <sup>413</sup>  
Within what time subpoena to be served.

**34.—(1)** Upon proof, to the satisfaction of the Judge presiding at the sittings of any Court, of the service of a subpoena upon any witness who fails to attend or to remain in attendance in accordance with the requirements of the subpoena, and that a sufficient sum for his fees as a witness had been duly paid or tendered to him, and that the presence of such witness is material to the ends of justice, the said Judge may, by his warrant, directed to any sheriff or other officer of the Court, or to any constable, cause such witness to be apprehended, and forthwith brought before him or any other Judge who may thereafter preside at such sittings to give evidence, and in order to secure his presence as a witness, such witness may be taken on such warrant before the presiding Judge and detained in the custody of the person to whom the warrant is directed, or otherwise, as the presiding Judge may order, until his presence, as such witness, is required, or, in the discretion of the said Judge, he may be released on a recognizance (with or without sureties) conditioned for his appearance to give evidence. <sup>414</sup>  
Bench warrant.

(2) The warrant may be according to Form No. 6, Appendix J., and may be executed in any part of New Brunswick. R. 482, (O). Form of bench warrant.

#### IV.—*Perpetuating Testimony.*

**35.** Any person who would, under the circumstances alleged by him to exist, become entitled, upon the happening of any future event, to any honour, title, dignity, or office, or to any estate or interest in any property, real or personal, the right or claim to which cannot by him be brought to trial before the happening of such event, may commence an action to perpetuate any testimony which may be material for establishing such right or claim. O. 37, r. 35, (E). <sup>415</sup>  
Action to perpetuate testimony.

**O. XXXVI,  
rr. 36—38.**

<sup>416</sup>  
When Attorney-General  
should be  
defendant  
to action  
to perpetuate  
testimony.

**36.** In all actions to perpetuate testimony touching any honour, title, dignity, or office, or any other matter or thing in which the Crown may have any estate or interest, the Attorney-General may be made a defendant; and in all proceedings in which the depositions taken in any such action in which the Attorney-General was so made a defendant are offered in evidence, such depositions shall be admissible, notwithstanding any objection to such depositions upon the ground that the Crown was not a party to the action in which such depositions were taken. O. 37, r. 36, (E).

<sup>417</sup>  
Witnesses.

**37.** Witnesses shall not be examined to perpetuate testimony unless an action has been commenced for the purpose. O. 37, r. 37, (E).

<sup>418</sup>  
Action not to  
be set down  
for trial.

**38.** No action to perpetuate the testimony of witnesses shall be set down for trial. O. 37, r. 38, (E).

**O. XXXVII,  
rr. 1, 2.**

**ORDER XXXVII.**

**I.—Affidavits and Depositions.**

<sup>419</sup>  
Evidence on  
motions, etc.,  
by affidavits.  
[RR. 439, 490,  
(O)].

**1.** Upon any motion, petition, or summons, evidence may be given by affidavit, but the Court or a Judge may, on the application of either party, order the attendance for cross-examination of the person making any such affidavit. O. 38, r. 1, (E).

<sup>420</sup>  
Cross-examination  
of  
deponent to  
affidavit.  
[See O. 36, r. 16  
(2), ante].

**2.** Any party or witness, on being duly served with an order of the Court or a Judge requiring him to attend at a certain time and place to be cross-examined, and on payment of his reasonable expenses in the same manner as if he had been served with a writ of subpoena, shall be bound to attend according to the direction thereof, and shall be subject to like penalties for disobedience thereto, as if he had been duly served with a writ of *subpœna ad testificandum*, and the expenses attending such cross-examination and re-examination shall be paid by the parties respectively in like manner as if the witness so to be cross-examined were the witness of the party cross-examining, and shall be costs in the cause of such parties respectively, unless the Court or Judge shall think fit to direct otherwise. C. S. 1903, c. 112, s. 94.

3. Upon motions founded upon affidavits, it shall be lawful for either party with leave of the Court or a Judge, to make affidavits in answer to the affidavits of the opposite party upon any new matter arising out of such affidavits. Copies of all affidavits (except affidavits of service of process or service of any notice or other paper) and other writings intended to be used on any motion or petition of which notice has been given, shall be served on the opposite party six days at least before the day on which such motion is to be made, or petition heard; copies of affidavits intended to be used in answer thereto, shall be served at least three days before such motion, and copies of affidavits in reply (which shall be confined to new matter alleged in the affidavits in answer) shall be served one day before such motion, beyond which no affidavit shall be allowed. C. S. 1903, c. 112, s. 106, *part*.

O. XXXVIII.  
rr. 5-7,  
421.  
Affidavits, in  
reply.

Within what  
time to be  
served.

4. Every affidavit shall be intitled in the cause or matter in which it is sworn; but in every case in which there are more than one plaintiff or defendant, it shall be sufficient to state the full name of the first plaintiff or defendant respectively, and that there are other plaintiffs or defendants, as the case may be; and the costs occasioned by any unnecessary prolixity in any such title shall be disallowed by the taxing officer. O. 38, r. 2, (E).

422  
Title of  
affidavits.  
[Cf. R. 320, (O)]

5. Affidavits shall be confined to the statement of facts within the knowledge of the deponent, except on interlocutory motions, on which statements as to his belief, with the grounds thereof, may be admitted. The costs of every affidavit which shall unnecessarily set forth matters of hearsay, or argumentative matter, or copies of or extracts from documents, shall be paid by the party filing the same. O. 38, r. 3, (E), *am.*; R. 518, (O).

423  
Contents.

6. In an action or proceeding to which a corporation is a party, any affidavit required to be made by it, may be made by any officer, servant, or agent of the corporation having a knowledge of the facts required to be deposed to, and he shall state therein that he has such knowledge. R. 519, (O), *am.*

424  
Affidavits by  
officers for  
corporation.

7. Every commissioner to administer oaths shall express the time when and the place where he shall take any affidavit, otherwise the same shall not be held authentic, nor be admitted

425  
Time and  
place of taking  
affidavits to  
be stated.



●. XXXVII.  
rr. 8-14.

to be filed without the leave of the Court or a Judge. O. 38, r. 5, (E), *am.*

<sup>426</sup>  
Form of  
affidavit.

[Cf. R. 516, (O)].

8. Every affidavit shall be drawn up in the first person, and shall be divided into paragraphs, and every paragraph shall be numbered consecutively, and as nearly as may be, shall be confined to a distinct portion of the subject. Every paper annexed to an affidavit, save affidavits of service of writs of summons returned by the sheriff or other officer, shall be marked by the commissioner or officer taking the affidavit with his name or the initial letters of his name. O. 38, r. 7, (E), *am.*; C. S. 1903, c. 112, s. 106; R. 4, S. C. H. T. 1875; R. 4, S. C. M. T. 1847; R. 2, S. C. E. T. 1848.

<sup>427</sup>  
Description  
and abode of  
deponent to be  
stated.  
[Cf. R. 516, (O)].

9. Every affidavit shall state the description and true place of abode of deponent, and shall be signed by him. O. 38, r. 8, (E), *am.*

<sup>428</sup>  
Affidavit  
made by two  
or more  
deponents.  
[R. 517, (O)].

10. In every affidavit made by two or more deponents the names of the several persons making the affidavit shall be inserted in the jurat, except that if the affidavit of all the deponents is taken at one time by the same officer it shall be sufficient to state that it was sworn by both (or all) of the "above named" deponents. O. 38, r. 9, (E); R. 2, S. C. H. T. 1848.

<sup>429</sup>  
Affidavits to  
be filed.  
[Cf. R. 523, (O)].

11. Every affidavit used shall be filed with the proper officer. C. S. 1903, c. 112, s. 106, *part*, *am.*

<sup>430</sup>  
Scandalous  
matter.  
[Cf. R. 296, (O)].

12. The Court or a Judge may order to be struck out from any affidavit any matter which is scandalous, and may order the costs of any application to strike out such matter to be paid as between solicitor and client. O. 38, r. 11, (E).

<sup>431</sup>  
Alterations.

13. No affidavit having in the jurat or body thereof any interlineations, alteration, or erasure, shall without leave of the Court or a Judge be read or made use of in any matter depending in Court unless the interlineation, or alteration or erasure is authenticated by the initials of the officer taking the affidavit. O. 38, r. 12, (E), *am.*; R. 520, (O).

<sup>432</sup>  
Affidavits by  
illiterate or  
blind persons.  
[R. 521, (O)].

14. Where an affidavit is sworn by any person unable to write or appearing to be illiterate or blind, the officer taking such affidavit shall certify in the jurat that the affidavit was

read in his presence to the deponent, that the deponent seemed perfectly to understand it, and that the deponent made his signature or made his mark in the presence of the officer. No such affidavit shall be used in evidence in the absence of this certificate, unless the Court or a Judge is otherwise satisfied that the affidavit was read over to and appeared to be perfectly understood by the deponent. O. 38, r. 13, (E); R. 1, S. C. H. T. 1848.

<sup>432</sup> XXXVII,  
rr. 12-20.

15. The Court or a Judge may receive any affidavit sworn for the purpose of being used in any cause or matter, notwithstanding any defect or misdescription of parties or otherwise in the title or jurat, or any other irregularity in the form thereof. O. 38, r. 14, (E), *am.*

<sup>433</sup> Admission of  
defective  
affidavit.

16. No affidavit sworn before the solicitor acting for the party on whose behalf it is made, or before the clerk or partner of such solicitor, shall be used; but this Rule shall not extend to an affidavit to hold to bail or to obtain an order for arrest. O. 38, rr. 16, 17, (E), *am.*

<sup>434</sup> Affidavit not  
to be sworn to  
before solicitor  
of party.  
[Cf. R. 522, (O).]

## II. Trial on Affidavit.

17. Within fourteen days after a consent for taking evidence by affidavit as between the parties has been given, or within such time as the parties may agree upon, or the Court or a Judge may allow, the plaintiff shall file his affidavits and deliver to the defendant or his solicitor copies thereof. O. 38, r. 25, (E), *am.*

<sup>435</sup> Time for filing  
and delivering  
plaintiff's  
affidavits.

18. The defendant within ten days after delivery of such copies, or within such time as the parties may agree upon, or the Court or a Judge may allow, shall file his affidavits and deliver to the plaintiff or his solicitor copies thereof. O. 38, r. 26, (E), *am.*

<sup>436</sup> Time for filing  
and delivering  
defendant's  
affidavits.

19. Within five days after the expiration of the last-mentioned ten days, or such other time as aforesaid, the plaintiff shall file his affidavits in reply, which affidavits shall be confined to matters strictly in reply, and shall deliver to the defendant or his solicitor copies thereof. O. 38, r. 27, (E), *am.*

<sup>437</sup> Affidavits in  
reply.

20. When the evidence is taken by affidavit, any party

<sup>438</sup> Cross-examination of  
deponent.

**O. XXXVII,  
rr. 21, 22.**

desiring to cross-examine a deponent who has made an affidavit filed on behalf of the opposite party, may serve upon the party by whom such affidavit has been filed, a notice in writing, requiring the production of the deponent for cross-examination at the trial, such notice to be served at any time before the expiration of ten days next after the end of the time allowed for filing affidavits in reply, or within such time as in any case the Court or a Judge may specially appoint; and unless such deponent is produced accordingly, his affidavit shall not be used as evidence unless by the special leave of the Court or a Judge. The party producing such deponent for cross-examination shall not be entitled to demand the expenses thereof in the first instance from the party requiring such production. O. 38, r. 28, (E), *am.*

<sup>439</sup>  
Compelling  
attendance for  
cross-examin-  
ation.

**21.** The party to whom such notice as is mentioned in the last preceding rule is given shall be entitled to compel the attendance of the deponent for cross-examination in the same way as he might compel the attendance of a witness to be examined. O. 38, r. 29, (E).

<sup>440</sup>  
Notice of trial.

**22.** When the evidence under this Order is taken by affidavit, notice of trial shall be given at the same time after the close of the evidence as in other cases is by these Rules provided after the close of the pleadings: provided that other affidavits may be filed and delivered if all the parties interested consent thereto, or the Court or a Judge so order. O. 38, r. 30, (E), *am.*

**O. XXXVIII,  
rr. 1, 2.**

## ORDER XXXVIII.

## MOTION FOR NEW TRIAL.

<sup>441</sup>  
Motion for  
new trial, etc.,  
whether trial  
with or with-  
out a jury.  
[Cf. RR. 782,  
783, (O)].

**1.** Every motion for a new trial or to set aside a verdict, finding, or judgment, shall be made, where there has been a trial without a jury, by appeal to the Court of Appeal, and where there has been a trial, or any issue therein, with a jury, to the Court of Appeal, and upon the hearing of the motion where the trial has been without a jury, the Court shall have all such powers as are exercisable by it upon the hearing of an appeal. O. 39, rr. 1 and 2, (E), *am.*

<sup>442</sup>  
Mode of  
application for  
new trial.

**2.** Every application for a new trial shall be by printed notice of motion to the opposite party or his solicitor, and no

rule *nisi*, order to show cause, or formal proceeding other than such notice of motion, shall be made or taken. The notice shall state the grounds of the application, and whether all or part only of the verdict or findings is complained of, and authorities relied on. Six copies of the notice shall be filed with the proper officer for the use of the Court of Appeal on or before the first day of the sittings of the Court at which the motion is to be heard; provided always that the Court may for good cause shown enlarge the time for the filing of such notice. O. 39, r. 3, (E), *am.*; C. S. 1903, c. 111, s. 372, *am.*

O. XXXVIII,  
rr. 3-6.

3. The notice of motion shall be served within twenty days after the trial or judgment, but the Court or a Judge may, either before or after the expiration of that period, enlarge the time for giving such notice. Vacation time shall not be reckoned in the computation of the time for serving the notice.

<sup>443</sup>  
Time for  
service of  
notice of  
motion.

4. The notice may be amended at any time by leave of the Court or a Judge on such terms as the Court or Judge may think just. O. 39, r. 5, (E).

<sup>444</sup>  
Amendment  
of notice of  
motion.

5. A new trial shall not be granted on the ground of misdirection or of the improper admission or rejection of evidence, or because the verdict of the jury was not taken upon a question which the Judge at the trial was not asked to leave to them, unless in the opinion of the Court some substantial wrong or miscarriage has been thereby occasioned in the trial; and if it appear to the Court that such wrong or miscarriage affects part only of the matter in controversy, or some or one only of the parties, the Court may give final judgment as to part thereof, or some or one only of the parties, and direct a new trial as to the other part only or as to the other party or parties. O. 39, r. 6, (E); C. S. 1903, c. 111, s. 376.

<sup>445</sup>  
Ground for  
granting a  
new trial.  
[R. 785, (O)].

6. A new trial may be ordered on any question whatever be the grounds for the new trial, without interfering with the finding or decision upon any other question. O. 39, r. 7, (E); C. S. 1903, c. 111, s. 377.

<sup>446</sup>  
New trial as  
to part.  
[R. 786, (O)].

**O. XXXIX.**  
**rr. 1-6.**

**ORDER XXXIX.**

**MOTION FOR JUDGMENT.**

<sup>447</sup>  
Judgment on  
motion for  
judgment.  
[R. 606, (O)].

**1.** Except where it is otherwise provided the judgment of, the Court shall be obtained by motion for judgment. O. 40, r. 1, (E), *am.*

<sup>448</sup>  
No judgment  
on true plead-  
ing only.

**2.** A party shall not be entitled to judgment at the trial or on motion on the ground of his pleading being true, if the facts proved are not sufficient in point of law to entitle him to judgment. R. 610, (O).

<sup>449</sup>  
Entry of  
wrong  
judgment.  
[Cf. R. 783 (1),  
(O)].

**3.** Where, at or after a trial with a jury, the Judge has directed that any judgment be entered, any party may apply to the Court of Appeal to set aside such judgment and enter any other judgment, on the ground that the judgment directed to be entered is wrong by reason that the finding of the jury upon the questions submitted to them has not been properly entered. O. 40, r. 3, (E), *am.*

<sup>450</sup>  
Entry of  
wrong  
judgment.  
[Cf. R. 783 (1),  
(O)].

**4.** Where, at or after a trial by a Judge, either with or without a jury, the Judge has directed that any judgment be entered, any party may apply to the Court of Appeal to set aside such judgment and to enter any other judgment, upon the ground that upon the finding as entered the judgment so directed is wrong. O. 40, r. 4, (E), *am.*

<sup>451</sup>  
Setting down  
motion for  
judgment  
where issues  
have been  
directed and  
tried.  
[Cf. R. 613, (O)].

**5.** Where issues have been ordered to be tried, or issues or questions of fact to be determined in any manner, the plaintiff may set down a motion for judgment as soon as such issues or questions have been determined. If he does not set down such a motion, and give notice thereof to the other parties within ten days after his right so to do has arisen, then after the expiration of such ten days any defendant may set down a motion for judgment, and give notice thereof to the other parties. O. 40, r. 7, (E).

<sup>452</sup>  
Where some  
only of issues  
directed have  
been tried, any  
party may  
apply to set  
down action  
on motion for  
judgment.  
[R. 614, (O)].

**6.** Where issues have been ordered to be tried, or issues or questions of fact to be determined in any manner, and some only of such issues or questions of fact have been tried or determined, any party who considers that the result of such trial or determination renders the trial or determination of the others of them unnecessary, or renders it desirable that

the trial or determination thereof should be postponed, may apply to the Court or a Judge for leave to set down a motion for judgment, without waiting for such trial or determination. And the Court or Judge may, if satisfied of the expediency thereof, give such leave, upon such terms, if any, as shall appear just, and may give any directions which may appear desirable as to postponing the trial of the other issues of fact. O. 40, r. 8, (E).

O. XXXIX,  
rr. 7-8.

7. No motion for judgment shall, except by leave of the Court or a Judge, be set down after the expiration of one year from the time when the party seeking to set down the same first became entitled so to do. O. 40, r. 9, (E).

<sup>453</sup>  
Motion to be  
set down with-  
in one year.  
[R. 612, (O)].

8. Upon a motion for judgment, or upon an application for a new trial, the Court may draw all inferences of fact, not inconsistent with the finding of the jury, and if satisfied that it has before it all the materials necessary for finally determining the questions in dispute, or any of them, or for awarding any relief sought, give judgment accordingly, or may, if it shall be of opinion that it has not sufficient materials before it to enable it to give judgment, direct the motion to stand over for further consideration, and direct such issues or questions to be tried or determined, and such accounts and inquiries to be taken and made, as it may think fit. O. 40, r. 10, (E).

<sup>454</sup>  
On motion for  
judgment or  
new trial final  
judgment may  
be given by  
Court.  
[Cf. R. 615, (O)].

9. Where it is made to appear on the hearing of any application that it will be conducive to the ends of justice to permit it, the Court or a Judge may direct the application to be turned into a motion for judgment, or a hearing of the cause or matter; and may make such order as to the time and manner of giving the evidence in the cause or matter, and with respect to the further prosecution thereof, as the circumstances of the case may require; and upon the hearing it shall be discretionary with the Court or Judge to either pronounce a judgment or make such order as may seem just. R. 617, (O).

<sup>455</sup>  
Pending appli-  
cation turned  
into motion  
for judgment,  
or hearing of  
cause.

## ORDER XL.

O. XL,  
r. 1.

### SETTLEMENT OF AND ENTRY OF JUDGMENTS.

1. On making any judgment or order which requires to be settled the proper officer shall draw up and submit minutes

<sup>456</sup>  
Minutes of  
judgment.  
[Cf. RR. 624,  
626, 627, (O)].

**O. XL,  
rr. 3-4.**

of the same to the solicitors on both sides, who may attend the officer upon an appointment to be made by him to settle the same. If any dispute shall arise as to the matter of such judgment or order the Judge who heard the cause or matter shall on application of either party, finally determine such dispute. C. S. 1903, c. 112, s. 126 ; O. 62, r. 7, (E).

<sup>457</sup>  
Mode of entry.

2. Every judgment whether pronounced in Court or Chambers, or entered by default, and every order pronounced in Court shall be entered at full length by the proper officer in a book to be kept for the purpose. The forms in Appendix F. shall be used, with such variations as circumstances may require. O. 41, r. 1, (E), *an* ; R. 635, (1), (O) ; C. S. 1903, c. 112, s. 127 ; c. 111, s. 176.

<sup>458</sup>  
Date of judgment pronounced in Court.  
[R. 629, (O)].

3. Where any judgment is pronounced by the Court or a Judge in Court, the entry of the judgment shall be dated as of the day on which such judgment is pronounced, unless the Court or Judge shall otherwise order, and the judgment shall take effect from that date ; provided that by special leave of the Court or a Judge a judgment may be ante-dated or post-dated. O. 41, r. 3, (E).

<sup>459</sup>  
Date of judgment not pronounced in Court.

4. In all cases not within the last preceding rule, the entry of judgment shall be dated as of the day on which the requisite documents are left with the proper officer for the purpose of such entry, and the judgment shall take effect from that date. O. 41, r. 4, (E).

<sup>460</sup>  
Time to be stated in judgment or order for doing any act ordered to be done.

5. Every judgment or order made in any cause or matter requiring any person to do an act thereby ordered shall state the time, or the time after service of the judgment or order, within which the act is to be done, and upon the copy of the judgment or order which shall be served upon the person required to obey the same there shall be indorsed a memorandum in the words or to the effect following, viz:—

<sup>461</sup>  
Memorandum to be indorsed on copy served.

" If you, the within named A. B., neglect to obey this judgment (or order) by the time therein limited, you will be liable to process of execution for the purpose of compelling you to obey the same judgment (or order)." O. 41, r. 5, (E).

<sup>462</sup>  
Liberty to apply need not be reserved.

6. It shall not be necessary in any judgment or order to reserve liberty to apply, but any party may apply to the

Court or Judge from time to time, as he may be advised.  
R. 622, (O).

**O. XI,  
rr. 7-12.**

**7.** Where judgment may be entered upon the filing of any affidavit or production of any document, the officer shall examine the affidavit or document produced, and if the same be regular and contain all that is by law required, he shall enter judgment accordingly. O. 41, r. 6, (E); R. 631, (O).

<sup>463</sup>  
Entry of  
judgment  
upon produc-  
tion of  
affidavit or  
document.

**8.** Where judgment may be entered pursuant to any order or certificate, or return to any writ, the production of such order or certificate or return shall be a sufficient authority to the officer to enter judgment accordingly. O. 41, r. 7, (E), *am.*

<sup>464</sup>  
Entry on  
order, etc.  
(R. 632, (O)).

**9.** Where reference is made to a referee or other officer to ascertain the amount for which final judgment is to be entered, the referee's or other officer's report shall be filed with the proper officer when judgment is entered. O. 41, r. 8, (E), *am.*

<sup>465</sup>  
On reference  
to officer his  
report to be  
filed.

**10.** In any cause or matter where the defendant has appeared by solicitor, no order for entering judgment shall be made by consent unless the consent of the defendant is given by his solicitor or agent. O. 41, r. 9, (E).

<sup>466</sup>  
Judgment by  
consent where  
defendant  
appears by  
solicitor.

**11.** Where the defendant has not appeared, or has appeared in person, no such order shall be made unless the defendant attends before a Judge and gives his consent in person, or unless his written consent is attested by a solicitor acting on his behalf, except in cases where the defendant is a barrister or solicitor. O. 41, r. 10, (E).

<sup>467</sup>  
Judgment by  
consent of  
defendant in  
person.

**12.** In order to acknowledge satisfaction of a judgment, it shall be requisite only to produce a satisfaction piece according to Form No. 18, Appendix F., and such satisfaction piece shall be signed by the party acknowledging the same or his personal representative, and his signature shall be witnessed by some practising solicitor expressly named by him, and attending at his request to inform him of the nature and effect of such satisfaction piece before the same is signed; the solicitor shall declare himself in the attestation thereto to be the solicitor for the person so signing the same, and state that he is witness as such solicitor (provided that the Court or a Judge may make an order dispensing with such signature under spe-

<sup>468</sup>  
Satisfaction  
of judgment,  
entry of.



cial circumstances). The satisfaction piece shall be entered in the office in which the judgment is entered. RR. 643, 644, (O), *am.*

**O. XII.  
rr. 1-5.**

**ORDER XLI.**

**EXECUTION.**

<sup>469</sup>  
Judgment or  
order to be  
obeyed with-  
out demand.

1. Where any person is by any judgment or order directed to pay any money, or to deliver up or transfer any property real or personal to another, it shall not be necessary to make any demand thereof, but the person so directed shall be bound to obey such judgment or order upon being duly served with the same without demand. O. 42, r. 1, (E).

<sup>470</sup>  
Waiver of  
conditional  
judgment or  
order.  
[Cf. R. 638, (O)].

2. Where any person who has obtained any judgment or order upon condition does not perform or comply with such condition, he shall be considered to have waived or abandoned such judgment or order so far as the same is beneficial to himself, and any other person interested in the matter may on breach or non-performance of the condition take either such proceedings as the judgment or order may in such case warrant, or such proceedings as might have been taken if no such judgment or order had been made, unless the Court or a Judge shall otherwise direct. O. 42, r. 2, (E).

<sup>471</sup>  
Enforcing  
judgment for  
the payment  
of money.  
[Cf. R. 837, (O)].

3. A judgment for the recovery by or payment to any person of money may be enforced by any of the modes by which a judgment, decree or order for the payment of money of the Supreme Court or of the Supreme Court in Equity might have been enforced at the time of the commencement of these Rules. O. 42, r. 3, (E), *am.*

<sup>472</sup>  
Enforcing  
judgment for  
payment into  
Court.  
[Cf. R. 839, (O)].

4. A judgment for the payment of money into court may be enforced by writ of sequestration, or in cases in which attachment is authorised by law, by attachment. O. 42, r. 4, (E).

<sup>473</sup>  
Judgment for  
the recovery  
of land.  
[R. 846, (O)].

5. A judgment for the recovery or for the delivery of the possession of land may be enforced by writ of possession. O. 42, r. 5, (E).

6. A judgment for the recovery of any property other than land or money may be enforced:

- (a) By writ for delivery of the property;
- (b) By writ of attachment;
- (c) By writ of sequestration. O. 42, r. 6. (E).

O. XII,  
rr. 6-11.

474  
Enforcing  
judgment for  
recovery of  
other prop-  
erty.  
[Cf. R. 862, (O)].

7. A judgment requiring any person to do any act other than the payment of money, or to abstain from doing any-thing, may be enforced by writ of attachment, or by committal. O. 42, r. 7, (E).

475  
Judgment to  
do or abstain  
from any act.  
[R. 863, (O)].

8. In these Rules the term "writ of execution" shall include writs of *fiery facias*, sequestration, and attachment, and all subsequent writs that may issue for giving effect thereto. And the term "issuing execution against any party" shall mean the issuing of any such process against his person or property as under the preceding Rules of this Order or otherwise shall be applicable to the case. O. 42, r. 8, (E), *am*.

476  
Meaning of  
"writ of execu-  
tion," etc.  
[Cf. R. 836, (O)].

9. Where a judgment or order is to the effect that any party is entitled to any relief subject to or upon the fulfilment of any condition or contingency, the party so entitled may, upon the fulfilment of the condition or contingency, and demand made upon the party against whom he is entitled to relief, apply to the Court or a Judge for leave to issue execution against such party. And the Court or Judge may, if satisfied that the right to relief has arisen according to the terms of the judgment or order, order that execution issue accordingly, or may direct that any issue or question necessary for the determination of the rights of the parties be tried in any of the ways in which questions arising in an action may be tried. O. 42, r. 9, (E).

477  
Execution of  
judgment on  
condition.  
[Cf. R. 841, (O)].

10. Every writ of execution shall be endorsed with the name and place of abode or office of business of the solicitor issuing the same; in case no solicitor shall be employed to issue the writ, then it shall be endorsed with a memorandum expressing that it has been issued by the plaintiff or defendant in person, as the case may be, mentioning the city, town, or parish, and also the name of the street, and number, if there be any, of the house of his residence. O. 42, r. 13, (E), *am*.

478  
Indorsement  
of name and  
address on  
writ of execu-  
tion.  
[R. 868, (O)].

11. Every writ of execution shall bear date of the day on which it is issued, and shall be prepared and issued by the

479  
Date and issue  
of writ of  
execution.  
[Cf. R. 867, (O)].

**O. XII.  
rr. 12-15.**

party entitled to execution or by his solicitor. The Forms in Appendix H. shall be used with such variations as circumstances may require. O. 42, r. 14, (E), *am.*

<sup>480</sup>  
**Expenses of  
execution.  
[R. 871, (O)].**

**12.** In every case of execution the party entitled to execution may levy the poundage, fees, and expenses of execution over and above the sum recovered. O. 42, r. 15, (E).

<sup>481</sup>  
**Amount of  
money, etc.,  
to be indorsed  
on writ.  
[R. 869, (O)].**

**13.** Every writ of execution for the recovery of money shall be indorsed with a direction to the sheriff, or other officer or person to whom the writ is directed, to levy the money really due and payable, and sought to be recovered under the judgment or order, stating the amount, and also to levy interest thereon, if sought to be recovered, at the rate of 5 per cent. per annum, from the time when the judgment or order was entered or made; provided that, in cases where there is an agreement between the parties that more than 5 per cent. interest shall be secured by the judgment or order, then the indorsement may be accordingly to levy the amount of interest so agreed. O. 42, r. 16, (E), *am.*

<sup>482</sup>  
**When *fi. fa.* to  
enforce pay-  
ment of money  
or costs may  
be sued out.  
[R. 843, (O)].**

**14.** Every person to whom any sum of money or any costs shall be payable under a judgment or order shall, so soon as the money or costs shall be payable, be entitled to sue out one or more writ or writs of *fi. fa.* to enforce payment thereof, subject nevertheless as follows:

(a) If the judgment or order is for payment within a period therein mentioned, no such writ as aforesaid shall be issued until after the expiration of such period;

(b) The Court or a Judge may, at or after the time of giving judgment or making an order, stay execution until such time as they or he shall think fit. O. 42, r. 17, (E).

<sup>483</sup>  
**Execution of  
judgment for  
money and  
costs.**

**15.** Upon any judgment or order for the recovery or payment of a sum of money and costs, there may be, at the election of the party entitled thereto, either one writ or separate writs of execution for the recovery of the sum, and for the recovery of the costs, but a second writ shall only be for costs and shall be issued not less than eight days after the first writ. O. 42, r. 18, (E).

**16.** A party who has obtained judgment or an order, not being a judgment for payment of money or costs, or for the recovery of land, may issue execution in fourteen days, unless the Court or a Judge shall order execution to issue at an earlier or later date with or without terms. O. 42, r. 19, (E).

O. XII,  
rr. 16-19.

484  
Time for  
execution,  
except for  
money or  
costs.

**17.** A writ of execution, if unexecuted, shall remain in force for two years only from its issue, unless renewed in the manner hereinafter provided; but such writ may, at any time before its expiration, be renewed by the party issuing it for two years from the date of such renewal, and so on from time to time during the continuance of the renewed writ, by such party giving a written notice of renewal to the sheriff, signed by the party or his solicitor; and a writ of execution so renewed shall have effect, and be entitled to priority, according to the time of the original delivery thereof. O. 42, r. 20, (E), *am.*

485  
Renewal of  
writ of execu-  
tion.  
[Cf. R. 872, (O)].

**18.** The production of a writ of execution, with the notice renewing the same purporting to be signed as in the next preceding Rule mentioned, shall be sufficient evidence of its having been so renewed. O. 42, r. 21, (E), *am.*

486  
Evidence of  
renewal.  
[Cf. R. 873, (O)].

**19.** As between the original parties to a judgment or order execution may issue, at any time within six years from the recovery of the judgment or the date of the order. O. 42, r. 22, (E).

487  
Execution to  
issue within  
six years.  
[Cf. R. 863, (O)].

**20.** In the following cases, viz:

- (a) Where six years have elapsed since the judgment or date of the order, or any change has taken place by death or otherwise in the parties entitled or liable to execution;
- (b) Where a husband is entitled or liable to execution upon a judgment or order for or against a wife;
- (c) Where a party is entitled to execution upon a judgment of assets *in futuro*;
- (d) Where a party is entitled to execution against any of the shareholders of a joint-stock company upon a judgment recorded against such company, or against a public officer or other person representing such company;

488  
Leave to issue  
execution.  
[Cf. R. 864, (O)].

**O. XII.**  
**r. 21-24.**

the party alleging himself to be entitled to execution may apply to the Court or a Judge for leave to issue execution accordingly. And such Court or Judge may, if satisfied that the party so applying is entitled to issue execution, make an order to that effect, or may order that any issue or question necessary to determine the rights of the parties shall be tried in any of the ways in which any question in an action may be tried. And in either case such Court or Judge may impose such terms as to costs or otherwise as shall be just. O. 42, r. 23, (E).

**489**  
Orders enforceable like judgments.  
[Cf. R. 835, (O)].

**21.** Every order of the Court or a Judge in any cause or matter may be enforced against all persons bound thereby in the same manner as a judgment to the same effect. O. 42, r. 24, (E).

**490**  
Execution by or against person not a party.  
[Cf. R. 885, (O)].

**22.** Any person not being a party to a cause or matter, who obtains any order or in whose favor any order is made, shall be entitled to enforce obedience to such order by the same process as if he were a party to such cause or matter; and any person not being a party to a cause or matter, against whom obedience to any judgment or order may be enforced, shall be liable to the same process for enforcing obedience to such judgment or order as if he were a party to such cause or matter. O. 42, r. 26, (E).

**491**  
No proceeding by *audita querela*. Application to stay execution.  
[Cf. R. 642, (1), (O)].

**23.** No proceeding by *audita querela* shall hereafter be used; but any party against whom judgment has been given may apply to the Court or a Judge for a stay of execution or other relief against such judgment, upon the ground of facts which have arisen too late to be pleaded; and the Court or a Judge may give such relief and upon such terms as may be just. O. 42, r. 27, (E).

**492**  
Saving of former remedies.

**24.** Nothing in this Order shall take away or curtail any right heretofore existing to enforce or give effect to any judgment or order in any manner or against any person or property whatsoever. O. 42, r. 28, (E).

**493**  
Order of issue of writs.

**25.** Nothing in this Order shall effect the order in which writs of execution may be issued. O. 42, r. 29, (E).

**494**  
Act ordered to be done at expense of disobedient party.  
[R. 862, (O)].

**26.** If a mandamus, granted in an action or otherwise, or a mandatory order, injunction, or judgment for the specific per-

formance of any contract be not complied with, the Court or a Judge, besides or instead of proceedings against the disobedient party for contempt, may direct that the act required to be done may be done so far as practicable by the party by whom the judgment or order has been obtained, or some other person appointed by the Court or Judge, at the cost of the disobedient party, and upon the act being done, the expenses incurred may be ascertained in such manner as the Court or a Judge may direct, and execution may issue for the amount so ascertained, and costs. O. 42, r. 30, (E).

●. XLII,  
rr. 27, 28.

27. Any judgment or order against a corporation wilfully disobeyed may, by leave of the Court or a Judge, be enforced by sequestration against their property, or by attachment against the directors or other officers thereof, or by writ of sequestration against their property. O. 42, r. 31, (E).

495  
Enforcing  
judgment or  
order against  
corporation.

28. An award may with the leave of the Court or a Judge, and on such terms as may be just, be enforced at any time though the time for moving to set it aside has not elapsed. O. 42, r. 31a., (E).

496  
Enforcing  
award.

## ORDER XLII.

●. XLII,  
rr. 1, 2.

## WRITS OF EXECUTION AND SEQUESTRATION.

1. Writs of execution in the forms in use immediately preceding the coming into force of these Rules, and in the forms in Appendix H., shall have the same force and effect as the like writs have heretofore had, and shall be executed in the same manner in which the like writs have heretofore been executed. O. 43, r. 1, (E), *ut*.

497  
Effect and  
manner of  
execution of  
writs.

2. Where any person is by any judgment or order directed to pay money into court or to do any other act in a limited time, and after due service of such judgment or order refuses or neglects to obey the same according to the exigency thereof, the person prosecuting such judgment or order shall, at the expiration of the time limited for the performance thereof, be entitled, without obtaining any order for that purpose, to issue a writ of sequestration against the estate and effects of such disobedient person. Such writ of sequestration shall have the same effect as a writ of sequestration in Chancery had in England before the commencement of the English

498  
Sequestration  
to enforce  
performance  
of act.  
(*cf.* R. 850, (O)).

**O. XLII.**  
**rr. 3, 4.**

Supreme Court of Judicature Act, 1873, and the proceeds of such sequestration may be dealt with in the same manner as the proceeds of writs of sequestration were before the same date dealt with by the said Court of Chancery. O. 43, r. 6, (E), *am.*

<sup>499</sup>  
No subpoena,  
or without  
leave, seques-  
tration for  
costs.

3. No subpoena for the payment of costs, and, unless by leave of the Court or a Judge, no sequestration to enforce such payment, shall be issued. O. 43, r. 7, (E), *am.*

<sup>500</sup>  
*Venditioni*  
*exponas.*

4. A writ of *venditioni exponas* may be issued and executed in the same cases and in the same manner as heretofore, and may be issued against goods and chattels alone, or lands alone. O. 43, r. 5, (E), *am.*; R. 845, (O).

**O. XLIII.**  
**rr. 1-3.****ORDER XLIII.****ATTACHMENT.**

<sup>501</sup>  
Effect of writ  
of attachment.

1. A writ of attachment against the person shall have the same effect as a writ of attachment issued out of the Supreme Court in Equity or out of the Chancery Division of the High Court of Justice in England has heretofore had. O. 44, r. 1, (E), *am.*; R. 854, (O).

<sup>502</sup>  
Writ of attach-  
ment not to  
issue without  
leave.

2. No writ of attachment shall be issued without the leave of the Court or a Judge, to be applied for on notice to the party against whom the attachment is to be issued. O. 44, r. 2, (E).

<sup>503</sup>  
Relief.

3. In case an attachment has been issued under any order of the Court or a Judge that a person be committed to gaol for contempt of Court, and there to be detained and imprisoned until such person shall have purged his said contempt, if it be made to appear that such person is in actual custody under such attachment, the Court or Judge may, upon such notice as may be directed, modify and change the order and limit the term of imprisonment under such attachment or grant such other relief as may in the nature and circumstances of the case seem just, but any relief that may be granted to any such person shall not relieve him from any civil liability to any other person. R. 861, (O).

**O. XLIV.**  
**r. 1.****ORDER XLIV.****MEMORIALS OF JUDGMENTS, ETC.**

<sup>504</sup>  
Certified copy  
of entry of or  
memorial of  
judgment.

1. A certified copy of the entry, or of any part thereof, or a memorial thereof, shall be evidence of any judgment or order, or of the part thereof required, either in Court or before

a Judge, or for registry in any county registry of deeds. Any memorial of any judgment or order or of any part thereof may be in Form No. 19, in Appendix F., or in the form required by and in accordance with the provisions of Chapter 128 of the Consolidated Statutes, 1903, with such variations as the circumstances of the case may require. When the memorial is in the Form No. 19, in Appendix F., it shall be sufficient if it is under the hand of the proper officer and seal of the Court, and it may be recorded in the office of the registrar of deeds of any county on production thereof to him without further proof. C. S. 1903, c. 112, s. 128, *am.*

**O. XLIV.**  
**r. 2.**

2. A judgment or order directing the payment of money by a party shall from the time when a memorial thereof shall be registered in any county where there may be lands of the party bind such lands for the time and in the manner provided in Chapter 128 of the Consolidated Statutes, 1903. C. S. 1903, c. 112, s. 129, *am.*

<sup>505</sup>  
Effect of registration of memorial of judgment for payment of money.

## ORDER XLV.

## WRIT OF POSSESSION.

**O. XLV.**  
**rr. 1-4.**

1. A judgment or order that a party do recover possession of land may be enforced by writ of possession in manner heretofore in use in England in actions of ejectment in superior courts of common law. O. 47, r. 1, (E), *am.*

<sup>506</sup>  
For recovery of land.  
[R. 846, (O)].

2. Where by any judgment or order any person therein named is directed to deliver up possession of any lands to some other person on or at any specified time after being served with the judgment or order, the person prosecuting such judgment or order shall, without any order for that purpose, be entitled to sue out a writ of possession on filing an affidavit showing due service of such judgment or order, and that the same has not been obeyed. O. 47, r. 2, (E), *am.*; R. 847, (O).

<sup>507</sup>  
Writ obtained on proof of service of judgment and default.

3. Upon any judgment or order for the recovery of any land and costs, there may be either one writ or separate writs of execution for the recovery of possession and for the costs at the election of the successful party. O. 47, r. 3, (E).

<sup>508</sup>  
Execution for land and costs.  
[Cf. R. 849, (O)].

4. A writ of possession shall have the effect of a writ of assistance, as well as of a writ of *habere fucias possessionem*.

<sup>509</sup>  
Effect of writ.  
[R. 848, (O)].



O. XLVI,  
FF. 1, 2.

## ORDER XLVI.

## WRIT OF DELIVERY.

510  
Writ of  
delivery for  
recovery of  
property other  
than land or  
money.  
[Cf. R. 852, (O)].

1. Where it is sought to enforce a judgment or order for the recovery of any property other than land or money by writ of delivery, the Court or a Judge may, upon the application of the plaintiff, order that execution shall issue for the delivery of the property, without giving the defendant the option of retaining the property, upon paying the value assessed, if any, and, that if the property cannot be found, and unless the Court or a Judge shall otherwise order, the sheriff shall distrain the defendant by all his lands and chattels in the sheriff's bailiwick, till the defendant deliver the property; or at the option of the plaintiff, that the sheriff cause to be made of the defendant's goods the assessed value, if any, of the property. O. 48, r. 1, (E).

511  
Form of writ.  
Separate writ  
for damages,  
costs and  
interest.  
[Cf. R. 852, (O)].

2. A writ of delivery shall be in the Form No. 6 in Appendix H., and when a writ of delivery is issued, the plaintiff shall, either by the same or a separate writ of execution, be entitled to have made of the defendant's goods the damages and costs awarded, and interest. O. 48, r. 2, (E).

O. XLVII,  
FF. 1, 2.

## ORDER XLVII.

I.—INTERLOCUTORY ORDERS AS TO MANDAMUS INJUNCTIONS  
OR INTERIM PRESERVATION OF PROPERTY, ETC.

512  
Interim  
preservation  
of property.  
[R. 1095, (O)].

1. When by any contract a *prima facie* case of liability is established, and there is alleged as matter of defence a right to be relieved wholly or partially from such liability, the Court or a Judge may make an order for the preservation or interim custody of the subject-matter of the litigation, or may order that the amount in dispute be brought into Court or otherwise secured. O. 50, r. 1, (E).

513  
Early trial of  
cause.

2. Whenever an application shall be made before trial for an injunction or other order, and on the opening of such application, or at any time during the hearing thereof, it shall appear to the Judge that the matter in controversy in the cause or matter is one which can be most conveniently dealt with by an early trial, without first going into the whole merits on affidavit or other evidence for the purposes of the

application, it shall be lawful for the Judge to make an order for such trial accordingly, and to direct such trial to be held at the next or any other sittings for any place, if from local or other circumstances it shall appear to him to be convenient so to do, or to set the same down for trial before himself or any other Judge at any time deemed convenient, and in the meantime to make such order as the justice of the case may require. O. 50, r. 1a, (E), *am.*

**O. XLVII,  
rr. 3-7.**

3. The Court or a Judge, upon the application of any party, may make an order for the sale, by any person or persons named in such order, and in such manner, and on such terms as the Court or Judge may think desirable, of any goods, wares, or merchandise which may be of a perishable nature or likely to injure from keeping, or which for any other just and sufficient reason it may be desirable to have sold at once. O. 50, r. 2, (E).

<sup>514</sup>  
Order for sale  
of perishable  
goods.  
[R. 1097, (O)].

4. The Court or a Judge, upon the application of any party to a cause or matter, and upon such terms as, may be just, may make any order for the detention, preservation, or inspection of any property or thing, being the subject of such cause or matter, or as to which any question may arise therein, and for all or any of the purposes aforesaid, to authorize any persons to enter upon or into any land or building in the possession of any party to such cause or matter, and for all or any of the purposes aforesaid to authorize any samples to be taken, or any observation to be made or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence. O. 50, r. 3, (E).

<sup>515</sup>  
Detention,  
preservation  
or inspection  
of property.  
[R. 1098, (O)].

5. Any Judge, by whom any cause or matter may be heard or tried with or without a jury, or before whom any cause or matter may be brought by way of appeal, may inspect any property or thing concerning which any question may arise therein. O. 50, r. 4, (E).

<sup>516</sup>  
Inspection by  
Judge.  
[R. 570, (O)].

6. The provisions of Rule 4 of this Order shall apply to inspection by a jury, and in such case the Court or a Judge may make all such orders upon the sheriff or other person as may be necessary to procure the attendance of a special or common jury at such time and place, and in such manner as they or he may think fit. O. 50, r. 5, (E).

<sup>517</sup>  
Inspection by  
jury.  
[Cf. R. 571, (O)].

7. A mandamus or an injunction may be granted or a receiver appointed by an interlocutory order of the Court in all

<sup>518</sup>  
When injunction or mandamus may be granted, or receiver appointed, by interlocutory order.  
[R. S. O. 1897, c. 51, s. 58 (9)].

**O. XLVIII,**  
**rr. 8-10.**

cases in which it shall appear to the Court to be just or convenient that such order should be made: and any such order may be made either unconditionally or upon such terms and conditions as the Court shall think just; and if an injunction is asked, either before, or at, or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, such injunction may be granted, if the Court shall think fit, whether the person against whom such injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title; and whether the estates claimed by both or by either of the parties are legal or equitable. J. A. 1873, s. 25 (8).

<sup>519</sup>  
Application  
under Rules 3,  
4 or 7.

**8.** An application for an order under Rule 3, 4 or 7 of this Order, may be made to the Court or a Judge by any party. If the application be by the plaintiff for an order under Rule 7 it may be made either *ex parte* or with notice, and if for an order under Rule 3 or 4 of this Order it may be made after notice to the defendant at any time after the issue of the writ of summons, and if it be by any other party, then on notice to the plaintiff and at any time after appearance by the party making the application. O. 50, r. 6, (E).

<sup>520</sup>  
Time for  
application  
under Rule 1.

**9.** An application for an order under Rule 1 of this Order may be made by the plaintiff at any time after his right there-to appears from the pleadings; or, if there be no pleadings, is made to appear by affidavit or otherwise to the satisfaction of the Court or a Judge. O. 50, r. 7, (E).

<sup>521</sup>  
Order for  
recovery of  
specific prop-  
erty, other  
than land sub-  
ject to lien, etc.  
[Cf. R. 1098, (O)].

**10.** Where an action is brought to recover, or a defendant in his defence seeks by way of counterclaim to recover specific property other than land, and the party from whom such recovery is sought does not dispute the title of the party seeking to recover the same, but claims to retain the property by virtue of a lien or otherwise as security for any sum of money, the Court or a Judge may, at any time after such last-mentioned claim appears from the pleadings, or, if there be no pleadings, by affidavit or otherwise, to the satisfaction of such Court or Judge, order that the party claiming to recover the property be at liberty to pay into court, to abide the event of the action, the amount of money in respect of which the lien or security is claimed, and such further sum (if

any) for interest and costs as such Court or Judge may direct, and that, upon such payment into court being made, the property claimed be given up to the party claiming it. O. 50, r. 8, (E).

**O. XLVIII.  
rr. 11-15.**

**11.** Where any real or personal estate forms the subject of any proceedings, and the Court or a Judge is satisfied that the same will be more than sufficient to answer all the claims thereon which ought to be provided for in such proceedings, the Court or Judge may at any time after the commencement of the proceedings, allow to the parties interested therein, or any one or more of them, the whole or part of the annual income of the real estate or a part of the personal estate or the whole or a part of the income thereof, up to such time as the Court or Judge shall direct. O. 50, r. 9, (E).

<sup>522</sup>  
Allowance of  
income of  
property  
*pendente lite*.

**12.** Whenever in an action for the administration of the estate of a deceased person, or execution of the trusts of a written instrument, a sale is ordered of any property vested in any executor, administrator, or trustee, the conduct of such sale shall be given to such executor, administrator, or trustee, unless the Court or a Judge shall otherwise direct. O. 50, r. 10, (E).

<sup>523</sup>  
Conduct of  
sale of trust  
estate.  
[Cf. R. 717, (O)].

**13.** No writ of injunction shall be issued. An injunction shall be by a judgment or order, and any such judgment or order shall have the effect which a writ of injunction formerly had. O. 50, r. 11, (E); R. 1094, (O).

<sup>524</sup>  
Injunction  
to be by  
judgment or  
order.

**14.** In any cause or matter in which an injunction has been or might have been claimed, the plaintiff may, before or after judgment, apply for an injunction to restrain the defendant or respondent from the repetition or continuance of the wrongful act or breach of contract complained of, or from the commission of any injury or breach of contract of a like kind relating to the same property or right, or arising out of the same contract; and the Court or a Judge may grant the injunction, either upon or without terms, as may be just. O. 50, r. 12, (E).

<sup>525</sup>  
Injunction  
against repeti-  
tion of wrong-  
ful act or  
breach of con-  
tract.

**15.** In all cases in which the Court has jurisdiction to entertain an application for an injunction against a breach of any covenant, contract, or agreement, or against the commission or continuance of any wrongful act, or for the specific

<sup>526</sup>  
Damages in  
lieu of or in  
addition to  
injunction.  
[R. S. O. 1897,  
c. 51, s. 58 (10)].

**O. XLVIII,  
rr. 16-19.**

performance of any covenant, contract, or agreement, it shall be lawful for the Court or a Judge to award damages to the party injured either in addition to or in substitution for such injunction or specific performance, and such damages may be ascertained in such manner as the Court or Judge may direct, or the Court or Judge may grant such other relief as it or he may deem just. C.S. 1903, c. 112, s. 33, *am.*; 21 & 22 V. c. 27, s. 2 (6), (Imp.).

## II.—RECEIVERS.

<sup>527</sup>  
Appointment  
of receiver by  
way of equit-  
able execu-  
tion.

**16.** In every case in which an application is made for the appointment of a receiver by way of equitable execution, the Court or a Judge in determining whether it is just or convenient that such appointment should be made shall have regard to the amount of the debt claimed by the applicant, to the amount which may probably be obtained by the receiver, and to the probable costs of his appointment, and may, if it or he shall so think fit, direct any inquiries on these or other matters before making the appointment. O. 50, r. 15a., (E).

<sup>528</sup>  
Security by  
receiver.

**17.** Where an order is made directing a receiver to be appointed, unless otherwise ordered, the person to be appointed shall first give security, to be allowed by the Court or a Judge, and taken before a person authorized to administer oaths, duly to account for what he shall receive as such receiver, and to pay the same as the Court or Judge shall direct; and the person so to be appointed shall, unless otherwise ordered, be allowed a proper commission or allowance. Such security shall be by recognizance in the Form No. 19 in Appendix L., unless the Court or a Judge shall otherwise order. O. 50, r. 16, (E). See O. 33, rr. 3, 7, *ante*, and s. 42 of Act.

<sup>529</sup>  
Where  
receiver  
appointed in  
Court, ad-  
journing  
into Cham-  
bers to give  
security.

**18.** Where any judgment or order is pronounced or made in Court appointing a person therein named to be receiver, the Court or a Judge may adjourn to Chambers the cause or matter then pending, in order that the person named as receiver may give security as in the last preceding rule mentioned, and may thereupon direct such judgment or order to be drawn up. O. 50, r. 17, (E).

<sup>530</sup>  
Receiver's  
account.

**19.** When a receiver is appointed with a direction that he shall pass accounts, the Court or Judge shall fix the days upon which he shall (annually, or at longer or shorter periods) file

and pass such accounts, and also the days upon which he shall pay the balances appearing due on the accounts so filed or such part thereof as shall be certified as proper to be paid by him. And with respect to any such receiver as shall neglect to file and pass his accounts and pay the balances thereof at the times so to be fixed for that purpose as aforesaid, the Judge before whom any such receiver is to account may, from time to time, when his subsequent accounts are produced to be examined and passed, disallow the commission therein claimed by such receiver, and may also, if he shall think fit, charge him with interest at the rate of 5 per cent. per annum upon the balances so neglected to be paid by him during the time the same shall appear to have remained in the hands of any such receiver. O. 50, r. 18, (E), *am.*

O. XLVII.  
rr. 20-22.

**20.** Receivers' accounts shall be in the Form No. 13 in Appendix L, with such variations as circumstances may require. O. 50, r. 19, (E).

531  
Form of  
Receiver's  
account.

**21.** Every receiver shall file his account together with an affidavit verifying the same in the Form No. 20 in Appendix L, with such variations as circumstances may require. An application shall thereupon be made to the Court or Judge by the plaintiff or person having the conduct of the cause to have such accounts passed. O. 50, r. 20, (E), *am.*

532  
Application to  
pass accounts.

**22.** In case of any receiver failing to file any account or affidavit, or to pass such accounts, or to make any payment, or otherwise, the receiver or the parties, or any of them, may be required to attend at Chambers to show cause why such account or affidavit has not been filed, or such account passed, or such payment made, or any other proper proceeding taken, and thereupon such directions as shall be proper may be given at Chambers or by adjournment into Court, including the discharge of any receiver and appointment of another, and payment of costs. O. 50, r. 21, (E).

533  
Consequences  
of default by  
Receiver.

### III.—LIQUIDATORS AND GUARDIANS.

**23.** The accounts of liquidators and guardians shall be passed and verified in the same manner as is by this Order directed as to receivers' accounts. O. 50, rr. 23, 24, (E).

534  
Accounts of  
liquidators  
and guardians.

**O. XLVIII,  
rr. 1-4.****ORDER XLVIII.****ACTION OF MANDAMUS.**

<sup>535</sup>  
Indorsement  
on writ of  
summons.  
[Cf. R. 1081,  
(O)].

1. The plaintiff, in any action in which he shall claim a mandamus to command the defendant to fulfil any duty in the fulfilment of which the plaintiff is personally interested, shall indorse such claim upon the writ of summons. O. 53, r. 1, (E).

<sup>536</sup>  
Form of  
indorsement.  
[Cf. R. 1082,  
(O)].

2. The indorsement shall be in the form given in Section IV. of Appendix A., Part III. O. 53, r. 2, (E).

<sup>537</sup>  
Order upon  
defendant to  
perform duty.  
[Cf. R. 1083,  
(O)].

3. If judgment be given for the plaintiff the Court or Judge may by the judgment command the defendant either forthwith, or on the expiration of such time and upon such terms as may appear to the Court or a Judge to be just, to perform the duty in question. The Court or a Judge may also extend the time for the performance of the duty. O. 53, r. 3, (E).

<sup>538</sup>  
Mandamus in  
action to be by  
judgment or  
order.  
[Cf. R. 1080,  
(O)].

4. No writ of mandamus shall hereafter be issued in an action, but a mandamus shall be by judgment or order, which shall have the same effect as a writ of mandamus formerly had. O. 53, r. 4, (E).

**O. XLIX,  
rr. 1, 2.****ORDER XLIX.****REPLEVIN.**

<sup>539</sup>  
Writ of  
replevin  
abolished.

1. No writ of replevin shall hereafter be issued, but where a person is entitled to replevy property unlawfully taken or detained he may obtain an order therefor in an action commenced by writ of summons.

<sup>540</sup>  
Motion for  
order for  
replevin.

2. An order of replevin may be obtained from the Court or a Judge or from the District Clerk of the Court for the county in which the property to be replevied is situate, on motion therefor on an affidavit by the person claiming the property, or by any other person, showing the facts of the wrongful taking or detention complained of, the value and description of the property, and that the person claiming it is the owner thereof, or is lawfully entitled to the possession thereof, as the case may be. R. 1068 (1), (O), *am.*

3.—(1) Where motion for an order is made, the Court or Judge or said Clerk may proceed on the *ex parte* application of the plaintiff, or may direct notice to be served on the defendant to show cause why the order should not issue; and may, in either case, grant or refuse the order or direct the Sheriff to take a bond in less or more than treble the value of the property, or may direct him, in addition to taking a bond pursuant to Rule 6, to take and detain the property until the further order of the Court, instead of at once replevying the same to the plaintiff; or may order that the plaintiff instead of giving a bond be at liberty to pay into Court to the credit of the action such sum as may be proper (to be named in the order) to stand as security to the defendant in the same manner and to the same extent as any bond which the plaintiff would otherwise be required to give to the Sheriff; or may impose any terms or conditions in granting the order, or in refusing the same, on the return of a motion, as under the circumstances seems just. R. 1069 (1), (O), *am.*

541  
Application for order may be *ex parte*, or may be directed to be heard on notice.

(2). Money paid into court shall remain in court as security aforesaid subject to order by the Court or a Judge. R. 1069 (2), (O).

4. Where an order of replevin is issued, the defendant may at any time, or from time to time, on notice to the plaintiff, apply to the Court or a Judge on affidavit or otherwise, to discharge, vary, or modify the order, or to stay proceedings thereunder, or for any other relief, with respect to the return, safety or sale of the property or any part thereof, or otherwise, and the Court or Judge may make such order thereon as may seem just. R. 1070, (O).

542  
Application by defendant to discharge order.

5. The order shall state the description and value of the property, and may be according to Form No. 53 in Appendix K. R. 1071, (O).

543  
Form of order.

6.—(1) Subject to any other order under Rule 3 providing for the payment of money into court instead of the giving of a bond, before the Sheriff acts on the order he shall take a bond from the plaintiff with two sufficient sureties in such sum as may be prescribed by an order made under Rule 3, if such an order has been made, or if no such order has been made, then in treble the value of the property as stated in the order

544  
Replevin bond to be taken by the sheriff.



**○. XLIX.**  
**FF. 7-9.**

of replevin ; the bond shall be assignable to the defendant ; and the bond and assignment thereof may be according to Form No. 54 in Appendix K., the condition being varied to correspond with the order. R. 1072 (1), (O),

Certificate  
to sheriff of  
payment of  
money into  
Court.

(2) Where money is paid into court instead of a bond being given, the Sheriff may, subject to any provisions in the order, act on the order upon a certificate of the proper officer, being delivered to him that the money required to be paid into Court has been paid in pursuant to the order. R. 1072 (2), (O).

<sup>515</sup>  
Indemnity of  
defendant  
where prop-  
erty not taken  
out of plain-  
tiff's posses-  
sion.

7. Where an order of replevin is issued for any property which had not been previously taken out of the plaintiff's possession, and for which the plaintiff might formerly have brought an action of trespass or trover, the defendant shall be entitled, if the plaintiff fails in the action to be fully indemnified against all damages sustained by the defendant, including any extra costs which he may incur in defending the action ; and the bond to be taken by the Sheriff or bailiff shall be conditioned, not only as heretofore required but also to indemnify and save harmless the defendant from all loss and damage which he may sustain by reason of the seizure, and of any deterioration of the property in the meantime, in the event of its being returned, and all costs, charges, and expenses which the defendant may incur, including reasonable costs not taxable between party and party. This rule shall not apply to cases of distress for rent or damage feasant. R. 1074, (O).

<sup>546</sup>  
Sheriff not to  
serve writ of  
summons  
until he has  
replevied  
property.

8. The Sheriff shall not serve a copy of the writ of summons or the order until he has replevied the property, or some part thereof, if he cannot replevy the whole in consequence of the defendant having eloiigned the same out of his county, or because the same is not in the possession of the defendant, or of any person for him. R. 1075, (O).

<sup>547</sup>  
Return by  
sheriff.

9. The Sheriff shall return the order on or before the tenth day after the service thereof, and shall transmit annexed thereto,

(a) The names of the sureties in, and the date of the bond taken from the plaintiff, and the name or names of the witnesses thereto ;

- (b) The place of residence and addition of the sureties ; Ch. XLIX, pt. 10-12.
- (c) The number, quantity and quality of the articles of property replevied ; and in case he has replevied only a portion of the property and cannot replevy the residue by reason of the same having been eloined out of his county, or not being in the possession of the defendant, or any other person for him, he shall state in his return the articles which he cannot replevy, and the reason therefor. R. 1077, (O).

10. Where the property to be replevied, or any part thereof, is secured or concealed in any dwelling house or other building or enclosure of the defendant, or of any other person holding the same for him, and the Sheriff publicly demands from the owner or occupant of such premises delivery of the property to be replevied, and the same is not delivered to him within twenty-four hours after such demand he shall, if necessary, break open such house, building or enclosure, for the purpose of replevying such property, or any part thereof, and shall replevy the same according to the order. R. S. O. 1897, c. 66, s. 4, *am.* 548 Power to sheriff to enter dwelling, etc., by force.

11. If the property to be replevied, or any part thereof, is concealed either about the person or on the premises of the defendant, or of any other person holding the same for him, and the Sheriff demands from the defendant or such other person delivery thereof, and delivery is neglected or refused, he shall, if necessary, search and examine the person and premises of the defendant, or of such other person, for the purpose of replevying such property, or any part thereof, and shall replevy the same according to the order. R. S. O. 1897, s. 66, s. 6, *am.* 549 Power to sheriff to search person.

12. If the Sheriff be a party, or in any way interested in any action of replevin, or if there be a vacancy in the office, the Sheriff of any adjoining county shall act under the order and he shall execute the same and do and perform every other duty and thing under said order in as full and ample a manner as the first-named Sheriff could had he not been a party or interested, or had the office not been vacant ; and for this purpose the last-mentioned Sheriff shall have the same privi- 550 Proviso where sheriff interested, etc., for sheriff of adjoining county to act.

leges, be subject to the same liabilities and be entitled to the same fees as in the case of similar services performed within his own bailiwick. C. S. 1903, c. 111, s. 370, *am.*

**O. L.**  
**rr. 1-2.**

## ORDER L

### ACTIONS BY AND AGAINST FIRMS AND PERSONS CARRYING ON BUSINESS IN NAMES OTHER THAN THEIR OWN.

**551**  
How partners  
may sue or  
be sued.  
[R. 222, (O)].

Disclosure of  
names of  
partners.

**552**  
Disclosure of  
partners'  
names.  
[R. 144, (O)].

**553**  
Service.  
[R. 223, (O)].

1. Any two or more persons claiming or being liable as co-partners and carrying on business within the jurisdiction may sue or be sued in the name of the respective firms, if any, of which such persons were co-partners at the time of the accruing of the cause of action; and any party to an action may in such case apply by summons to a Judge for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, co-partners in any such firm, to be furnished in such manner, and verified on oath or otherwise, as the Judge may direct. O. 48a., r. 1, (E).

2. When a writ is sued out by partners in the name of their firm, the plaintiffs or their solicitors shall, on demand in writing by or on behalf of any defendant, forthwith declare in writing the names and places of residence of all the persons constituting the firm on whose behalf the action is brought. And if the plaintiffs or their solicitors shall fail to comply with such demand, all proceedings in the action may, upon an application for that purpose, be stayed upon such terms as the Court or a Judge may direct. And when the names of the partners are so declared, the action shall proceed in the same manner and the same consequences in all respects shall follow as if they had been named as the plaintiffs in the writ. But all the proceedings shall, nevertheless, continue in the name of the firm. O. 48a., r. 2, (E).

3. Where persons are sued as partners in the name of their firm under Rule 1, the writ shall be served either upon any one or more of the partners or at the principal place, within the jurisdiction, of the business of the partnership upon any person having, at the time of service, the control or management of the partnership business there; and, subject to these rules, such service shall be deemed good service upon the firm so sued, whether any of the members thereof are out

of the jurisdiction or not, and no leave to issue a writ against them shall be necessary; provided that, in the case of a co-partnership which has been dissolved to the knowledge of the plaintiff before the commencement of the action, the writ of summons shall be served upon every person within the jurisdiction sought to be made liable. O. 48*a.*, r. 3, (E).

**O. L.  
rr. 4-a.**

4. Where a writ is issued against a firm, and is served as directed by Rule 3, every person upon whom it is served shall be informed by notice in writing given at the time of such service whether he is served as a partner or as a person having the control or management of the partnership business, or in both characters. In default of such notice, the person served shall be deemed to be served as a partner. O. 48*a.*, r. 4, (E).

<sup>554</sup>  
Notice of  
capacity in  
which person  
is served.  
[R. 224, (O)].

5. Where persons are sued as partners in the name of their firm, they shall appear individually in their own names, but all subsequent proceedings shall, nevertheless, continue in the name of the firm. O. 48*a.*, r. 5, (E).

<sup>555</sup>  
Appearance  
by partners.  
[R. 225, (O)].

6. Where a writ is served under Rule 3, upon a person having the control or management of the partnership business, no appearance by him shall be necessary unless he is a member of the firm sued. O. 48*a.*, r. 6, (E).

<sup>556</sup>  
No appearance  
except by  
partners.  
[R. 226, (O)].

7. Any person served as a partner under Rule 3, may enter an appearance under protest, denying that he is a partner, but such appearance shall not preclude the plaintiff from otherwise serving the firm and obtaining judgment against the firm in default of appearance if no partner has entered an appearance in the ordinary form. O. 48*a.*, r. 7, (E).

<sup>557</sup>  
Appearance  
under protest  
of person  
served as  
partner.  
[R. 227, (O)].

8. Where a judgment or order is against a firm, execution may issue:

<sup>558</sup>  
Execution of  
judgment  
against a firm.  
[R. 228, (O)].

- (a) Against any property of the partnership within the jurisdiction;
- (b) Against any person who has appeared in his own name under Rule 5 or 6, or who has admitted on the pleadings that he is, or who has been adjudged to be, a partner;
- (c) Against any person who has been individually served as a partner with the writ of summons, and has failed to appear.

**O. L.  
rr. 9-11.**

If the party who has obtained judgment or an order claims to be entitled to issue execution against any other person as being a member of the firm, he may apply to the Court or a Judge for leave so to do; and the Court or Judge may give such leave if the liability be not disputed, or if such liability be disputed may order that the liability of such person be tried and determined in any manner in which any issue or question in an action may be tried and determined. But except as against any property of the partnership, a judgment against a firm shall not render liable, release, or otherwise affect any member thereof who was out of the jurisdiction when the writ was issued, and who has not appeared to the writ unless he has been made a party to the action under Order XI., or has been served within the jurisdiction after the writ in the action was issued. O. 48 *a.*, r. 8, (E).

**559  
Attachment  
of debts owing  
from firm.  
[R. 229, (O)].**

9. Debts owing from a firm carrying on business within the jurisdiction may be attached under Chapter 134 of the Consolidated Statutes, 1903, although one or more members of such firm may be resident abroad: provided that any person having the control or management of the partnership business or any member of the firm within the jurisdiction is served with the attaching order. An appearance by any member pursuant to an order shall be a sufficient appearance by the firm. O. 48 *a.*, r. 9, (E), *am.*

**560  
Application of  
Rules to  
actions  
between  
co-partners.  
[R. 230, (O)].**

10. The above Rules shall apply to actions between a firm and one or more of its members, and to actions between firms having one or more members in common; provided such firm or firms carry on business within the jurisdiction; but no execution shall be issued in such actions without leave of the Court or a Judge, and on an application for leave to issue such execution all such accounts and inquiries may be directed to be taken and made, and directions given, as may be just. O. 48 *a.*, r. 10, (E).

**561  
Application of  
Rules to per-  
son carrying  
on business as  
a firm.  
[R. 231, (O)].**

11. Any person carrying on business within the jurisdiction in a name or style other than his own name may be sued in such name or style as if it were a firm name; and, so far as the nature of the case will permit, all Rules relating to proceedings against firms shall apply. O. 48 *a.*, r. 11, (E).

## ORDER LI.

O. LI.  
rr. 1-5.

## SALES BY THE COURT.

I.—*Generally.*

1. If in any cause or matter relating to any real estate, it shall appear necessary or expedient that the real estate or any part thereof should be sold, the Court or a Judge may order the same to be sold, and any party bound by the order and in possession of the estate, or in receipt of the rents and profits thereof, shall be compelled to deliver up such possession or receipt to the purchaser, or such other person as may be thereby directed. O. 51, r. 1, (E).

<sup>562</sup>  
Power of  
Court to order  
sale of real  
estate.  
[Cf. C. S. 1903,  
c. 112, s. 149].

2. In debenture-holders' actions, where the debenture-holders are entitled to a charge by virtue of the debentures, or of a trust deed, or otherwise, and the plaintiff is suing on behalf of himself and other debenture holders, and where the Judge in person is of opinion that there must eventually be a sale, he may in his discretion direct a sale before judgment, and also after judgment, before all the persons interested are ascertained, whether served or not. O. 51, r. 1*b*, (E).

<sup>563</sup>  
Power to make  
order for sale  
in debenture-  
holders' action  
at any time.

3. Where a sale is ordered, the Court or a Judge may cause the property or part thereof to be sold either by public auction, private contract, or tender, or part by one mode and part by another, as they or he may think best for the interest of all parties. R. 716, (O).

<sup>564</sup>  
Modes of sale.

4. All sales of real estate ordered by the Court or a Judge shall be conducted by a Referee. C. S. 1903, c. 112, s. 150. See O. 33, r. 3, *ante*.

<sup>565</sup>  
Sale to be by  
Referee.

5. The Referee to whom such sale shall be referred, shall advertise the same at public auction in one or more of the public newspapers of the county where the premises are situate, or if no newspaper be published in such county, in the *Royal Gazette*, for not less than two months prior to the day of sale, and by printed handbills, one of which shall be posted up at the Court House, one at the Registry Office, and one in some public place in the city, town or parish where the lands are situate, specifying in such advertisement the time and some public place for the sale, and then and there may sell or cause

<sup>566</sup>  
Advertise-  
ment of sale.

**O. LI.  
rr. 6-8.**

the same to be sold to the highest bidder. If the Referee shall find it necessary, for want of purchasers or other good cause, to postpone such sale, the postponement shall be at least for two weeks, and shall be noticed during that time at the foot of the former advertisement or otherwise as the said Referee may think proper, and so on in case of any subsequent postponement. C. S. 1903, c. 112, s. 200, *part*.

**567  
Conveyance  
on sale.**

**6.** Immediately upon such sale the said Referee shall execute in his own name as such Referee and deliver to the purchaser a conveyance of the land so sold, which conveyance shall briefly refer to the judgment or order, the advertising and the sale, and then proceed to convey the same to the said purchaser. Every such conveyance duly acknowledged or proved and registered in the Registry Office of the county where the lands lie shall be evidence of the execution thereof, and that all the proceedings on which such conveyance was founded were rightly had. C. S. 1903, c. 112, s. 201, *part*.

**Effect of  
conveyance.**

**568  
Report by  
Referee.**

**7.** A report of the sale shall be made by the Referee to the Court or a Judge and it shall be the duty of the party having the conduct of the sale to move for the confirmation of the report.

## II—Sales of Infants' Estates, Etc.

**569  
Sale or leasing  
of infant's  
interest in  
land.**

**8.** An infant seized of or entitled to an estate of freehold, or for a term of years or to any interest in any real estate, whether in possession or reversion, may by his next friend or guardian petition the Court or a Judge for an order to sell or dispose of the said property, which shall proceed in a summary way on affidavits to enquire into the merits of such application. If it appears that the disposal of such property or any part thereof is necessary for the support or education of such infant, or that the interests of the infant will be substantially promoted by such disposal, on account of any part of such property being exposed to waste or dilapidation, or being wholly unproductive, or that there is any other reasonable cause for such disposal, the Court or a Judge may, on the filing of a bond by such guardian or next friend, or other person approved by the Court or Judge, in case he be not already a lawfully appointed guardian, with such sureties and in such form as shall be directed, order the letting for a term of years,

the sale or other disposal of such real estate, or interest, by such guardian or next friend, in such manner and with such restrictions as shall be deemed expedient, but not in any case contrary to any last will or conveyance by which such estate or term was devised or conveyed to such infant. If any real estate of an infant is subject to dower, and the person entitled to dower consents in writing to accept in lieu of dower any gross sum which the Court or Judge thinks reasonable, or the permanent investment of a reasonable sum in such manner that the interest thereof be made payable to the person entitled to dower during her life, the Court or Judge may direct the payment of such sum in gross, out of the purchase money to the person entitled to dower, as may be deemed upon the principles applicable to life annuities a reasonable satisfaction for such estate; or may direct the payment to the person entitled to dower of an annual sum, or of the income or interest to be derived from the purchase money, or any part thereof, as may seem just, and for that purpose may make such order for the investment or other disposition of the purchase money, or any part thereof, as may be necessary. C. S. 1903, c. 112, s. 189, *am.*; R. S. O. 1897, c. 168, s. 9.

**O. LI.  
rr. 9, 10.**

**Release of  
dower inter-  
est.**

9. All sales, leases and conveyances made in good faith by any guardian or next friend in pursuance of such order, shall be as effectual as if made by such infant if of full age, and it shall not be necessary in the conveyance to recite any part of the proceedings required by this Order, but the same shall briefly refer to the order and the sale, leasing or other disposal of such property. When the sale shall be made by or under the direction of an officer of the Court, such officer shall make and file a report thereof with the proper officer, which may on petition or motion be confirmed as in other like cases. C. S. 1903, c. 112, s. 190.

**570  
Effect of sale  
or lease.**

**Contents of  
conveyance.**

**Report of sale.**

10. Upon any order for the sale of any property being made as aforesaid, the infant to whom the same shall belong shall be considered, so far as relates to such property, a ward of the Court, and the Court may make such order for the investment, disposal and application of the proceeds of such property, and of the increase and interest arising therefrom, as shall secure the same for the infant's benefit. C. S. 1903, c. 112, s. 191.

**571  
Application of  
proceeds of  
sale.**



**§. LI.**  
**rr. II-12.**  
572  
Share of infant  
in proceeds of  
sale.

**11.** No sale made as aforesaid shall give to such infant any other or greater interest or estate in the proceeds of such sale, than he had in the estate so sold. C. S. 1903, c. 112, s. 192.

573  
Effect of conveyance.

**12.** Every conveyance made under the above provisions duly acknowledged or proved and registered, shall be evidence that all the proceedings on which the same is founded were rightly had. C. S. 1903, c. 112, s. 193.

574  
Recognizance  
by guardian.

**13.** The recognizance to be taken on the appointment of any guardian shall be filed with the proper officer, and be subject to such orders touching the recovery of the amount or any part thereof, in case of any breach of the same, as the Court or a Judge shall think fit. C. S. 1903, c. 112, s. 194.

575  
Reference  
dispensed with  
where estate  
does not  
exceed \$4,000.

**14.** In cases where it is made to appear on affidavit that the whole property of an infant does not exceed four thousand dollars, and the nature, description and value of the property, real and personal, shall be specifically set forth in the petition, together with the names of the infant's relatives, a guardian may be appointed on the presentation of the petition with an affidavit of its truth, without reference, if the Court or Judge shall think fit so to do. C. S. 1903, c. 112, s. 195.

### III.—Sales of Lunatics' Estates, Etc.

576  
Sale or mortgage of lunatic's estate.

**15.** Where any person by a commission in the nature of a writ *de lunatico inquirendo*, or by proceedings under Order LIV., is found lunatic or of unsound mind and incapable of managing his affairs, the Court or a Judge may on petition of the committee of the estate of such person or of any of his creditors, order and direct the freehold and leasehold estate of such person to be sold or incumbered by way of mortgage or otherwise as shall be deemed most expedient for raising money to pay debts or for performing the contracts of such person, with the costs and charges of the same, and of any sale, mortgage or incumbrance, and further direct such committee to execute in the name of such person conveyances of the said estate, and do whatever may be necessary to effect the same. C. S. 1903, c. 112, s. 231, *am.*

577  
Lease of estate  
for life, etc., of  
lunatic.

**16.** Where such person may be seized of freehold lands for his natural life or of some other estate, with power of leasing

for life or for years, such power may be executed by the said committee under the direction of the Court or a Judge. C. S. 1903, c. 112, s. 232.

<sup>578</sup>  
O. L.L.  
rr. 12-21.

**17.** Where such person may be seized of any freehold estate in fee, or any absolute interest in leasehold estates, and it may be for his benefit that leases or under-leases should be made of such estates for terms of years, and especially to encourage the erection of or the repairs of buildings thereon, or otherwise improving the same, the Court or a Judge may order such committee to make leases of any part or the whole of such estate, according to the interest of the lunatic therein, subject to such rents, covenants and conditions as such Court or Judge may direct. C. S. 1903, c. 112, s. 233.

<sup>578</sup>  
Lease of estate  
of lunatic.

**18.** No absolute sale of the real estate, or any part thereof, of any such person shall be made, without at least two months' notice of the time and place of such sale, by advertisement in one or more of the newspapers published in the county wherein the land is situate, or if there be no newspaper published in such county, then in the *Royal Gazette*. The surplus, if any, after answering the purpose of such sale, shall be applied by the committee, under the direction of the Court or Judge, for the support of such lunatic and his family. C. S. 1903, c. 112, s. 234.

<sup>579</sup>  
Advertis-  
ement of sale of  
lunatic's  
estate.

Application of  
surplus.

**19.** Any such person, or the committee of his estate in his name, by order of the Court or a Judge, on the petition of any party beneficially interested in the lands seized or possessed by such person, or any interest therein, or any money secured therein, and on hearing the parties concerned, may convey any such lands, or assign or discharge any such mortgage or lien, as by such order may be directed. C. S. 1903, c. 112, s. 235.

<sup>580</sup>  
Order to  
lunatic or  
committee to  
convey land or  
to assign or  
discharge  
mortgage.

**20.** Every such person being a trustee, mortgagee, or judgment creditor, or his committee, may be compelled under like order to make such conveyances and discharges as trustees, mortgagees, or judgment creditors of sound mind may be compelled to make. C. S. 1903, c. 112, s. 236.

<sup>531</sup>  
Order to  
lunatic  
trustee, etc.,  
to discharge  
mortgage, etc.

**21.** Every act done by any committee under the authority of the Court or a Judge in this Order or other Rules, shall be valid and binding against any such person so found lunatic

<sup>582</sup>  
Lunatic  
bound by act  
of committee.

583  
O. LI.  
rr. 22-24.

or of unsound mind and incapable of managing his affairs, and all persons claiming under him. C. S. 1903, c. 112, s. 237.

583  
Order for sale  
of estate of  
lunatic, or  
collecting in  
of debts,  
where estate  
does not  
exceed \$2,000.

22. The Court or a Judge, on the application by petition of any person interested in the affairs of any insane person, and on proof by affidavit of the interest, and of the insanity of the person for whom he applies, may, in any case where the estate, real or personal, or both, does not exceed the sum of two thousand dollars, make an order requiring the sale of such estate, or the collection of any moneys due such insane person, in the name of the applicant or otherwise, and that the proceeds shall be paid and applied in such manner and on such conditions as in the said order may be prescribed. C. S. 1903, c. 112, s. 238.

584  
Notice of  
application for  
sale, etc., to be  
given to  
lunatic, next  
of kin, etc.

23. On any application made to the Court or a Judge under rules 15 to 20, or either of them, or under rule 22, the applicant shall disclose to the Court or a Judge the names and places of residence of the lunatic or insane person, and of his next of kin, and the names and places of residence of the committee of his estate and person (if any) as far as he can ascertain the same, and it shall be competent for the Court or a Judge to make such order as may seem expedient as to notice of such application and service thereof upon the lunatic or insane person, his next of kin and committee. C. S. 1903, c. 112, s. 239.

#### IV.—*Foreclosure Sales and Mortgage Actions.*

585  
Decree for  
mortgage sale.

24. In an action for the foreclosure and sale of mortgaged premises, the Court or a Judge shall have power to decree or order a sale of the same, or such part thereof as may be sufficient to discharge the amount due on the mortgage, with the costs of the action. Upon the Court or a Judge assessing the amount due on such mortgage a judgment or order shall be made directing a sale of the mortgaged premises ordered to be sold, describing such premises, and stating the amount found due; the Referee to whom such sale shall be referred, shall advertise the same at public auction in one or more of the public newspapers of the county where the premises are situated, or if no newspapers be published in such county, in the *Royal Gazette*, for not less than two months prior to the day of sale, and by printed handbills, one of which shall be posted

Advertise-  
ment of sale.

up at the Court House, one at the Registry Office, and one in some public place in the city, town or parish where the lands are situate, specifying in such advertisement the time and some public place for the sale, and then and there may sell or cause the same to be sold to the highest bidder. If the Referee shall find it necessary, for want of purchasers or other good cause, to postpone such sale, the postponement shall be at least for two weeks, and shall be noticed during that time at the foot of the former advertisement or otherwise as the said Referee may think proper, and so on in case of any subsequent postponement. Nothing herein shall prevent an order of reference, where the defendant shall apply for it, or in case of long or complicated accounts respecting any mortgage; and in case of such reference, when the Referee shall have ascertained the amount due and made his report of the same, the Court or Judge shall on confirmation of such report, or on giving judgment on any exceptions filed thereto, or at such other time as the Court or Judge shall see fit, make an order for the sale of the premises in the manner hereinbefore directed. C. S. 1903, c. 112, s. 200, *am.*

**O. L.L.  
rr. 25, 26.**

**25.** Immediately upon such sale the said Referee shall execute in his own name as such Referee and deliver to the purchaser a conveyance of the land so sold, which conveyance shall briefly refer to the said judgment or order, the advertising and the sale, and then proceed to convey the same to the said purchaser, which conveyance shall vest in the purchaser the same estate as would have vested in the mortgagee if the equity of redemption had been foreclosed, and such deed shall be a bar against all parties to the suit in which such decree was made, and all claiming under them; and every such conveyance duly acknowledged or proved and registered in the registry office of the county where the lands lie shall be evidence of the execution thereof, and that all the proceedings on which such conveyance was founded were rightly had. C. S. 1903, c. 112, s. 201.

<sup>586</sup>  
Conveyance.

Effect of  
conveyance.

**26.** The proceeds of every sale made under the judgment or order aforesaid shall be applied to the discharge of the debt and costs, and if there be a surplus it shall be brought into Court for the use of the person entitled thereto, subject to the order of the Court or a Judge to be made on petition or motion and affidavit with the production of the mortgage or

<sup>587</sup>  
Application of  
proceeds of  
sale.

**O. LI,  
rr. 37-39.**

other securities, and notice to other parties interested or otherwise as may be ordered. Provided, if all the parties interested in the suit or in the surplus shall agree in writing to the payment of the surplus to the person entitled thereto, the Referee may make such payment over to such persons, and their receipt shall be a sufficient discharge to the Referee therefor. The receipt with the agreement shall be forthwith filed with the proper officer. C. S. 1903, c. 112, s. 202.

**588  
Sale of whole  
mortgaged  
premises.**

**27.** If it shall appear to the Court or a Judge that a sale of the whole mortgaged premises will be most beneficial to the parties the judgment or order shall be entered accordingly, or the Court or Judge if a reference be ordered may direct the same to be ascertained by the Referee. The proceeds of such sale shall be applied as well to the payment of the amount due with the costs, as towards the residue not due at the time of sale; and if such residue do not bear interest, the Court or a Judge may direct the same to be paid, with a deduction of the legal interest for the time during which such residue shall not be due. C. S. 1903, c. 112, s. 203.

**589  
Decree for sale  
or foreclosure  
to stand where  
part payment  
of principal,  
etc., made.**

**28.** When any suit shall be brought for foreclosure and sale of mortgaged premises, or the foreclosure alone of any mortgage, the defendant may pay to the plaintiff at any time before sale or foreclosure absolute the principal and interest due with costs, and thereby terminate the suit; but if a judgment or order of sale or foreclosure shall have passed, and any further amount may thereafter be due thereon, the same shall stand as a security for such further sum, and upon any subsequent default of payment, the same may be enforced by the further order of the Court or a Judge for foreclosure, or the sale of the mortgaged premises, as the case may be, or of such part thereof from time to time as shall be necessary, until the amount secured by the mortgage and the costs of the proceedings therein shall have been fully satisfied. C. S. 1903, c. 112, s. 204.

**590  
Memorial of  
foreclosure  
judgment.**

**29.** A memorial in the Form No. 19 in Appendix F., of every absolute and unconditional judgment or order of foreclosure may be registered in the office of the registrar of deeds of the county where the lands mentioned in such judgment or order are situated, and such memorial or copy thereof certified by the registrar shall be evidence of such judgment or order in all Courts in the Province. C. S. 1903, c. 112, s. 205.

**30.** When subsequent incumbrances affect any mortgaged premises which may be sold under judgment or order, the residue of the proceeds remaining after the discharge of the first mortgage, shall be subject, under the order of the Court or a Judge, to such subsequent incumbrances according to their priority, whether the same may be due or otherwise, and to the like deduction of interest, as in Rule 27. C. S. 1903, c. 112, s. 206.

**C. L.L.  
RT. 30-32.**

**591**  
Application of  
residue of  
proceeds of  
mortgage sale  
to payment of  
subsequent  
mortgages.

**31.** When any foreclosure shall be ordered, the order for the same shall allow such time for the payment of the money due, with interest and costs, as the Court or a Judge may direct, not to be less in any case than two months; the amount of principal and interest up to the time of payment to be ascertained as in the case of a foreclosure and sale, and on non-payment of the amount so found due, with the costs, and proof thereof by affidavit, the Court or Judge on motion or petition may order the judgment or order of foreclosure to be made absolute; provided that on good cause shown by affidavit and previous notice to the plaintiff, a further extension of the time for payment of the money due may be ordered, in which case such extension shall be allowed on such terms as may be prescribed, and so on as often as may be deemed necessary. C. S. 1903, c. 112, s. 207.

**592**  
Foreclosure.

Enlargement  
of time for  
redemption.

**32.** When the principal and interest of any mortgage, together with the costs, if any, shall be paid by the mortgagor or any person claiming under him, whether the same shall be in action or otherwise, the Court or a Judge may on satisfactory proof by affidavit of such payment, and on hearing the opposite party, order the mortgagee or other person receiving the money to enter satisfaction in the registry office where registered, or subscribe and acknowledge a certificate in discharge thereof, such entry or certificate having been first demanded at the cost of the applicant and refused, and may also award costs to such applicant, or prescribe such other terms as the Court or Judge may think just. If the party disobey such order, the Court or Judge on proof thereof by affidavit, shall direct the registrar of deeds of the county where the mortgage is registered, at the cost of the party applying, to enter satisfaction in the same manner as if done by the party himself, and register the order directing such entry. C. S. 1903, c. 112, s. 208.

**593**  
Entry of satis-  
faction of  
mortgage, etc.,  
by order of  
Court.

Disobedience  
of order.

**O. L.  
rr. 33-37.**

<sup>594</sup>  
Costs in fore-  
closure action  
where amount  
due at com-  
mencement of  
action does not  
exceed \$300.

**33.** In any action brought for the foreclosure of a mortgage where the amount due thereon at the commencement of the action does not exceed three hundred dollars, where judgment has been given by default for want of an appearance, the costs to be taxed and allowed to the solicitor, and the fees payable to the Referee, shall be one half the amount of the costs taxable for similar services where the amount due on the mortgage at the commencement of the action exceeds three hundred dollars. But where in any such case the defendant appears and defends the action, and the plaintiff succeeds at the hearing, he shall be entitled to recover full costs for all proceedings subsequent to appearance, unless the defendant shall obtain an order directing that the plaintiff shall only be entitled to receive half the amount of costs taxable in cases where the amount due at the commencement of the action exceeds three hundred dollars as aforesaid. C. S. 1903, c. 112, s. 209.

#### V.—*Partition Actions and Sales.*

<sup>595</sup>  
Legal title in  
partition  
action.

**34.** The partition of lands, tenements and hereditaments held in co-parcenary, joint tenancy or tenancy in common shall be effected by the Court or a Judge in an action brought for that purpose, and the Court or a Judge shall have power in such action without holding the pleadings or directing an issue, to decide all questions that may arise in the pleadings with respect to the legal title to the lands sought to be partitioned or any part or parts thereof. C. S. 1903, c. 112, s. 210.

<sup>596</sup>  
Judgment in  
partition bind-  
ing on infant.

**35.** When an infant shall be a party to any action for partition, it shall not be necessary to give such infant a day to show cause after he shall have attained the age of twenty-one years. C. S. 1903, c. 112, s. 211.

<sup>597</sup>  
Partition to be  
made by  
Referee.

**36.** No commission shall be issued in actions for partition, but partition shall be made under the judgment or order directing the same, and the directions formerly contained in the commission, shall be inserted in such judgment or order. The partition shall be made by a Referee to be nominated and selected as hereinbefore provided. C. S. 1903, c. 112, s. 212.

<sup>598</sup>  
If objected to.  
Referee not to  
make sale, etc.

**37.** No sale or partition shall be made by a Referee in any action for partition if any party to the action objects there-

to, until after his report recommending such sale or partition, as the case may be, shall have been confirmed by the Court or a Judge, or a sale shall have been ordered in accordance with the provisions of the next following Rule. C. S. 1903, c. 112 s. 213.

**O.J.L.L.**  
**rr. 38-41.**

**38.** Whenever in any action for partition, a partition shall be ordered, and the Court or a Judge shall be satisfied that it is difficult to make a beneficial partition of the lands in question, the Court or Judge may order a sale of the lands to be made by a Referee, and when a sale is so ordered, the Court or a Judge shall specify whether the said lands shall be sold in one lot or in separate parcels, and if a sale in parcels be directed, the order to be made by the Court or a Judge shall specify and describe the same. The Referee nominated shall proceed to partition or sell the said lands as directed by the judgment or order in accordance with the provisions in that behalf contained in the next following Rule. C. S. 1903, c. 112, s. 214. See 31 & 32 Vict. c. 40, ss. 3, 4 and 5, (Imp.).

**589**  
Judgment for  
sale of land.

**39.** When the Court or Judge shall order a sale under the last preceding Rule, the Referee may sell the same or any part thereof as directed by the judgment or order at public auction to the highest bidder, giving not less than two months' previous notice in a newspaper of the county where the land lies, or if none be published there, then in the *Royal Gazette*, and convey the same to the purchaser, and he shall forthwith make a report of his doings under his hand. In cases where he shall have partitioned one portion of the estate and sold the remainder, he shall in his report specify what is in his opinion the value of the several portions partitioned, so that the Court or Judge on confirming the return may be able to order such a distribution of the funds derived from such sale as will make the shares of all parties equal, according to their several interests in the estate to be partitioned. C. S. 1903, c. 112, s. 215.

**600**  
Sale.

Report of  
value of por-  
tions parti-  
tioned where  
part of land  
sold.

**41.** Any conveyance to be made by a Referee under the provisions of Rules 38 and 39 of this Order, shall vest in the grantee mentioned therein all the right, title and interest of all parties to the action, of, in and to the lands therein mentioned, and the same shall be valid notwithstanding any defects in his report, and when such conveyance is acknowl-

**601**  
Effect of con-  
veyance.



**O. LL.  
IT. 41, 42.**

edged or proved and registered, the same, or a certified copy thereof, when admissible in evidence, shall be evidence that all the proceedings on which such conveyance is founded were rightly had. C. S. 1903, c. 112, s. 216.

**602  
Effect of  
decree in  
severalty.**

**41.** The judgment or order of the Court or a Judge whereby any portion of lands held in co-parcenary, joint tenancy, or tenancy in common, shall be ordered in severalty, shall transfer to such co-parcener, joint tenant or tenant in common, all the right, title and interest of the other parties interested therein, as well infants and married women, as others, being parties to such proceedings; a memorial of such judgment or order shall be made and registered in the registry office of the county where the lands or any part thereof are situate, and the same or a certified copy thereof, when admissible in evidence, shall be evidence that all proceedings in which such judgment or order was made, were rightly had. C. S. 1903, c. 112, s. 217.

**Memorial of  
decree.**

**603  
Costs.**

**42.** The costs of all parties to any action brought for the partition of lands, to be ascertained by and taxed by the proper officer, shall be shared and borne by the several parties to such action rateably and in proportion to the value of their respective interests in the lands and premises partitioned, unless the Court or Judge otherwise orders; the said costs shall be and remain a lien upon the respective shares of the several parties in the lands partitioned, or in the proceeds of the sale thereof, for the amounts to be paid by them respectively until paid; provided always, that if the Court or Judge is of opinion that a plaintiff has needlessly commenced an action for partition of any lands or other property, or that any party interested in a partition action, whether a plaintiff or a defendant, has without what the Court or a Judge may deem sufficient reason, refused either before or after the commencement of such action to agree to a public sale on two months' notice, or an amicable partition of such land or other property without sale or partition by the Court or a Judge, the Court or Judge may in its or his discretion compel such plaintiff or party to pay the costs of action, or deprive such plaintiff or party of his costs in any portion thereof. C. S. 1903, c. 112, s. 218.

VI.—*Vesting of Titles and Execution of Conveyances,  
etc., by Order of Court.*

§. 11,  
r. 43.

**43.**—(1) When any judgment or order shall have been made directing the sale of any land for any purpose whatsoever or any judgment or order directing the conveyance of any lands or premises, or any judgment or order setting aside any deed or conveyance of any lands or premises shall have been made, every person seized or possessed of such lands or premises or entitled to a contingent right therein, being a party to the action or proceeding in which such judgment or order shall have been made and bound thereby, or being otherwise bound by such judgment or order, shall be deemed to be so seized or possessed or entitled, as the case may be, upon a trust; and in every such case it shall be lawful for the Court or a Judge if it or he shall think it expedient for the purpose of carrying such sale, judgment or order into effect, to make an order vesting such land or premises, or any part thereof, for such estate as the Court or Judge shall think fit, either in any purchaser or in such other person as the Court or Judge shall direct, and every such order shall have the same effect as if such person so seized or possessed or entitled had been free from all disability, and had duly executed all proper conveyances and assignments of such land or premises for such estate.

604  
Person seized,  
etc., of land  
decreed to be  
sold or con-  
veyed, etc., to  
be deemed to  
be seized in  
trust.

Vesting order.

Effect of  
order.

(2). In every case in which the Court or a Judge has authority to order the execution of a deed, conveyance transfer or assignment of any property, real or personal, the Court or Judge may by order vest such real or personal estate in such person or persons, and in such manner, and for such estates, as would be done by any such deed, assignment or transfer, if executed; and thereupon the order shall have the same effect as if the legal or other estate or interest in the property had been actually conveyed by deed or otherwise, for the same estate or interest, to the person in whom the same is so ordered to be vested, or in the case of a chose in action, as if such chose in action had been actually assigned to such last-mentioned person.

Vesting order  
as to real or  
personal  
estate.  
[R. S. O. 1897,  
c. 51, s. 36].

(3). A copy of any judgment or order in this Rule mentioned, certified by the proper officer, under his hand and the seal of the Court, may, where any lands are affected thereby, be

Registration  
of vesting  
order.

**O. LI.  
R. 45.**

registered in the office of the registrar of deeds of the county where the lands or premises mentioned in such judgment or order are situate; such copy of such judgment or order or a copy thereof, certified by the registrar, shall be evidence of such judgment or order in all Courts in the Province. C. S. 1903, c. 112, s. 148.

**605  
Execution of  
instruments  
by order of  
Court.**

**44.** Where any person neglects or refuses to comply with a judgment or order directing him to execute any conveyance, contract, or other document, or to indorse any negotiable instrument, the Court or a Judge may, on such terms and conditions (if any) as may be just, order that such conveyance, contract, or other document shall be executed, or that such negotiable instrument shall be indorsed by such person as the Court or Judge may nominate for that purpose; and in such case the conveyance, contract, document, or instrument so executed or indorsed, shall operate and be for all purposes available as if it had been executed or indorsed by the person originally directed to execute or indorse it. J. A. 1884, s. 14, (E).

**O. LII.  
R. 1-3.**

## ORDER LII.

### ADMEASUREMENT OF DOWER.

**606  
Petition for  
admeasure-  
ment of dower.**

**1.** Any widow may apply to the Court or a Judge by petition for the admeasurement of her dower, specifying in such petition the lands in which she claims dower. C. S. 1903, c. 112, s. 247.

**607  
Service of  
petition.**

**2.** A copy of such petition, with notice of the time when it will be presented, shall be served at least twenty days previous to its presentation, upon the heirs of her husband, or if they are not the owners of the land subject to dower, then upon the owners of such lands claiming a legal or equitable freehold estate therein, or their guardian when any such heirs or owners are infants. C. S. 1903, c. 112, s. 248.

**608  
How service  
to be effected.**

**3.** Such notice may be served personally on any party of full age, or upon the guardian of infants, or by leaving the same with any party of proper age at the last residence of such party or guardian in case of his temporary absence; and if any such heir or owner be resident out of the Province, the service of such notice may be upon the tenant in actual occupation of the lands, or if there be no tenant, then by

publishing the same for three weeks in the *Royal Gazette*, or in any newspaper published in the county in which the lands are situate. C. S. 1903, c. 112, s. 249.

**O. LII,  
RT. 4-8.**

4. When such heirs or owners are infants, and have no guardian, the Court, on application of the widow, shall appoint some discreet and substantial freeholder as guardian of such infants, for the sole purpose of appearing for and protecting the interests of such infants in the proceedings. C. S. 1903, c. 112, s. 250.

**609  
Appointment  
of guardian  
for infants.**

5. Notice of the application for the admeasurement of dower, and all notices in the subsequent proceedings, shall be served on such guardian, whether the infant reside within the Province or not. C. S. 1903, c. 112, s. 251.

**610  
Service on  
guardian.**

6. After the expiration of forty days from the death of the husband, his heirs, or any of them, or the owners of any land subject to dower claiming a legal or equitable freehold estate therein, or the legal guardians of any such heirs or owners, may by notice in writing require the widow of such husband to make demand of her dower within ninety days after the service of such notice, in the lands of her deceased husband, or of such parts thereof as shall be specified in such notice. C. S. 1903, c. 112, s. 252.

**611  
Notice by  
heirs, etc., to  
widow to de-  
mand dower.**

7. If such widow shall not make her demand of dower within the time specified in such notice, by commencing an action, or by an application for admeasurement as herein prescribed, or if such widow shall not make such demand by petition within one year after her husband's death, the heirs of the husband of such widow, or any of them, or the owner of any land subject to dower, claiming a legal or equitable freehold interest therein, or the guardian of any such heir or owner, may apply by petition to the Court or a Judge for the admeasurement of the said widow's dower in the lands of her husband, or of such part thereof as shall be specified in the petition. C. S. 1903, c. 112, s. 253.

**612  
When heirs  
or owners may  
petition for  
admeasure-  
ment of dower.**

8. A copy of such petition with notice of the time of presenting the same, shall be served personally on said widow at least twenty days previous to the presentation. If the widow does not reside in the Province, and the petitioner does

**613  
Service of  
petition, etc.,  
on widow.**

**O. LII.  
RT. 9-19.**

to the Court or a Judge that reasonable diligence has been used to ascertain her place of residence, then the service of such copy of petition and notice may be made by publishing the same for two months in the *Royal Gazette*, or in such public newspaper or newspapers as the Court or Judge may direct. C. S. 1903, c. 112, s. 254.

**614  
Joinder of  
several  
owners.**

**9.** The owners of separate parts of any one tract originally owned by the husband, may, if they think fit, appear to the application of the widow, or make a joint application by petition, so as to have only one admeasurement of dower for the whole tract. C. S. 1903, c. 112, s. 255.

**615  
Order for  
admeasure-  
ment of dower.**

**Dispute as to  
right of dower.**

**10.** Upon such application being made, either by the widow or any heir or owner, or by the guardian of such heir or owner, the Court or a Judge may upon such notice order that admeasurement be made of such widow's dower of all the lands of her husband, or of such part thereof as shall be specified in such application, and if on the hearing of such petition, the widow's right of dower should be disputed, the Court or Judge may order a hearing of the matter by evidence *viva voce*, or may direct an issue to try such right, and until the decision thereof the admeasurement of dower shall be suspended. Where publication is made as provided by Rule 8, the Court or Judge shall have power to enquire into the want of knowledge of the petitioner, and may direct any further notice to be given as may seem reasonable. C. S. 1903, c. 112, s. 256.

**616  
Appointment  
of commis-  
sioners.**

**11.** The Court or Judge shall appoint three respectable and disinterested freeholders residing in the county where the lands in which dower is claimed or the greater part thereof are situate, to be commissioners for the purpose of making such admeasurement, by an order, without any commission, which shall specify the lands of which dower is to be admeasured, and the time at which the commissioners are required to report, and may also direct the commissioners to enquire into and report upon the arrears of dower (if any). C. S. 1903, c. 112, s. 257.

**617  
Oath by com-  
missioners.**

**12.** The commissioners before entering upon their duties shall be sworn faithfully, honestly and impartially, to discharge their duties according to the best of their skill and ability. C. S. 1903, c. 112, s. 258.

**13.** If the persons so appointed commissioners shall die, resign, or neglect or refuse to serve, others shall be appointed in their place by the Court or a Judge. C. S. 1903, c. 112, s. 259.

**O. LII,**  
**rr. 13-15.**

**618**  
Appointment  
of new com-  
missioners.

**14.** The commissioners so appointed shall execute their duties as follows :—

**619**  
How commis-  
sioners to per-  
form duties.

**1st.** They shall admeasure and lay off as speedily as possible a portion or portions equivalent to one-third part in each of the lands embraced in the order for their appointment as the dower of such widow, designating such part or parts with posts, stones, marks or other permanent monuments.

**2nd.** In making such admeasurement they shall take into account any permanent improvements made upon the lands embraced in the said order by any heir, guardian of minors, or other owners, since the death of the husband of such widow, or since the alienation thereof by such husband, and if practicable, shall award such improvements within that part of the lands not allotted to such widow, and if not practicable so to award the same, they shall make a deduction from the lands allotted to such widow proportionate to the benefit she will derive from such part of the said improvements as shall be included in the portion assigned to her.

**3rd.** They shall make a full report to the Court or Judge of their proceedings, with the quantity, courses, distances and metes and bounds of the land admeasured and allotted by them to the widow, with a description of the posts, stones, boundaries, marks and other permanent monuments thereof, and the items of their charges, and the amount of arrears (if any) at the time specified in the order for their appointment.

**4th.** If both parties desire it, or if from any cause the commissioners find it difficult to make such admeasurement, they may make a special report, showing the value of the widow's dower in the said premises.

**5th.** They may employ a surveyor to aid them in such admeasurements. C. S. 1903, c. 112, s. 260.

**15.** The Court or Judge may, on the application of such commissioners, or on the application of either party, enlarge the

**620**  
Enlarge-  
ment of time  
for making  
report.

**9. III.  
FF. 16-18.**  
Discharge of  
commissioners  
neglecting to  
report.

time for making their report, and may by order accept such report, or discharge the commissioners neglecting to make the same, and appoint others in their place. C. S. 1903, c. 112, s. 261.

**621**  
Exception to  
report.

**16.** The Court or Judge may, on good cause shown, set aside, alter or amend the said report and confirm the same as so altered or amended, or may appoint new commissioners or make such further order as may be consistent with justice; or if no sufficient cause is shown against the said report, the same shall be confirmed. C. S. 1903, c. 112, s. 262.

Confirmation  
of report.

**622**  
Parties bound  
by report.

**17.** The admeasurement or the valuation so made and confirmed, and the amount of arrears (if any) shall, unless reversed on appeal, be binding and conclusive as to the location and extent of the widow's right of dower, and the valuation and amount of arrears, on the parties who have applied for the same, and on all parties to whom such notice has been given as hereinbefore directed, and all parties claiming under them or any of them, and the arrears may be recovered by action of debt in any court of competent jurisdiction; provided, however, that in case the order confirming any such report should be amended or altered on appeal, then only the order as so amended or altered shall be so binding and conclusive. C. S. 1903, c. 112, s. 263.

Recovery of  
arrears.

Amendment  
of report on  
appeal.

**623**  
Registration  
of certified  
copy of order  
confirming  
report.

**18.** When any order confirming any such report shall not be appealed from within the time limited for that purpose by the practice of the Court, or if appealed from, the same shall be sustained, altered or amended, the proper officer shall furnish to any of the parties applying for the same a copy of the order so confirmed by the Court or Judge, or as altered or amended on appeal, if so altered or amended, certified under his hand and the seal of the Court, which copy so certified, and without other proof, shall be registered at full length in the office of any registrar of deeds for any of the counties of the Province, in like manner as other instruments affecting lands are registered; and where any such report so confirmed, altered or amended, shall show or contain a valuation, such valuation shall, from the time of such certified copy being registered in the county where such lands are situate, be a lien upon the lands as designated by the Court or Judge in pursuance of the next following rule, and the

Lien on lands.

same may be recovered against the owner of such lands, with interest, by action against the owners and all parties claiming under them. C. S. 1903, c. 112, s. 264.

**O. LII.**  
**rr. 19, 20.**

**19.** When a special report may be made by the said commissioners under the fourth sub-clause to Rule 14 of this Order, the Court or Judge, on confirming the same, shall declare upon what lands the value of the widow's dower shall be a lien, on the certified copy of the order confirming the report being registered, as provided in the next preceding rule; any such lien may be discharged, or satisfaction thereof acknowledged on the registry in like manner as in the case of mortgages, and on such discharge being registered, or satisfaction acknowledged, such lien shall be absolutely extinguished. C. S. 1903, c. 112, s. 265.

**624**  
To what lands  
lien shall  
attach.

**20.** The widow to whom dower shall be admeasured may at any time after the expiration of thirty days from the registry of the certified copy of the order confirming the report, as provided for in Rule 18, but not before, apply to the Court or a Judge for a writ of possession, and the Court or Judge may on fourteen days' notice of such application being given to the owner of such lands, or the person or persons in the actual occupation thereof against whom such writ is sought, and on being satisfied of the date of registry of such certified copy, and of a previous demand of possession and refusal, if no sufficient cause be shown to the contrary, order a writ of possession to be issued. C. S. 1903, c. 112, s. 266, *am.*

**625**  
Writ of pos-  
session to  
widow.

### ORDER LIII.

**O. LIII.**  
**r. 1.**

#### CUSTODY AND ADOPTION OF INFANTS, ETC.

##### *I.—Custody of Infants.*

**1.** It shall be lawful for the Court or a Judge upon the application by the mother of an infant under sixteen years of age, who may so apply without next friend, to order that the petitioner shall have access to such infant at such times and subject to such regulations as the Court or Judge shall deem proper; or to order that such infant shall be delivered to the mother and remain in or under her custody or control, or shall, if already in her custody or under her control, so remain

**626**  
Access to  
infant.

Custody by  
mother.



**O. LIII.  
PT. 1-6.**Variation of  
order.

until such infant shall attain such age not exceeding sixteen years, as the Court or Judge shall direct, and also to order that such custody or control shall be subject to such regulations as regards access by the father or guardian of such infant, and otherwise as the Court or Judge shall deem proper. The Court or a Judge may afterwards alter, vary or discharge such order on the application of either parent (in which case the mother may apply or oppose the application without next friend) or, after the death of either parent, on the application of the guardian of any such infant; and in every case may make such order respecting the costs of the mother and the liability of the father for the same or otherwise as to costs, as the Court or Judge may think just. C. S. 1903, c. 112, s. 196, *am.*

<sup>627</sup>  
Interest of  
infant to be  
considered in  
determining  
to which parent  
custody to  
be given.

2. Whenever any application shall be made to the Court or a Judge for the custody or control of an infant, or for access to an infant, it shall be the duty of the Court or a Judge to take into consideration the interests of such infant in deciding between the claims of the parents of such infant. C. S. 1903, c. 112, s. 197.

<sup>628</sup>  
Order for  
maintenance.

3. The Court or a Judge may make an order for the maintenance of the infant by the father thereof, as according to the pecuniary circumstances of the father, the Court or Judge thinks just and reasonable.

<sup>629</sup>  
Appeal.

4. Any order of the Court or Judge made under Rule 1 of this Order, shall be subject to appeal to the Court of Appeal. C. S. 1903, c. 112, s. 198.

**II.—Adoption of Infants.**

<sup>630</sup>  
Petition for  
leave to adopt  
child.

5. Any unmarried person, or a husband and wife jointly, may petition the Court or a Judge for leave to adopt a child or children, and for a change of name of such child or children. C. S. 1903, c. 112, s. 240.

<sup>631</sup>  
Consent of  
child and  
parents.

6. When any such child is of the age of twelve years or upwards, the written consent of such child to such adoption shall be presented with the aforesaid petition, and also written consent by each of the parents of such child, or in case of death of one of such parents, by the survivor of them, to such adoption; provided that if one of the living parents is hope-

lessly insane or divorced from the other, and has not the custody of such child or children, the consent of such parent will not be required. C. S. 1903, c. 112, s. 241.

O. LIII.  
FF. 7-9.

7. If there are no living parents, then such written consent as aforesaid must be given by the legal guardian or guardians, if any, of such child or children (but the powers of such guardian shall wholly cease upon adoption); in case the said child or children should not have any guardian or guardians, then by one of the next of kin to the child or children residing within the jurisdiction of the Court; and if there are no next of kin, then by a discreet and suitable barrister, to be appointed by the Court or Judge, to act in the proceedings as next friend of and for such child; such barrister to be appointed on the petition of the person or persons desiring to adopt such child. Provided that when such child is a deserted child, and has ceased to be cared for or maintained by its parents, or the survivor, or by its guardian, or, if illegitimate, by its mother, it shall not be necessary to obtain the consent of such parent or guardian, and in no case shall it be necessary to obtain the consent of the putative father of an illegitimate child. C. S. 1903, c. 112, s. 242.

<sup>632</sup>  
Consent by  
guardian, etc.

Deserted or  
illegitimate  
child.

8. If the Court or Judge is satisfied as to the truth of the matters stated in the petition, and as to the identity and relation of the parties, and of the ability of the petitioner or petitioners to bring up and educate the child properly, and of the fitness and propriety of such adoption, an order shall be made setting forth the facts, and declaring that from the date of such order such child to all legal intents and purposes is the child of such petitioner or petitioners, and the surname of the child is thereby changed to the surname of the petitioner or petitioners adopting such child. C. S. 1903, c. 112, s. 243.

<sup>633</sup>  
Order of  
Court.

9. By such order the natural parents shall be divested of all legal rights in respect to such child or children, and such child or children after the date of the order aforesaid shall be free from all legal obligations of obedience and maintenance in respect to them; and such child shall be for the custody of the person and right of obedience, as well as of lineal inheritance, but not collateral, to all intents and purposes the child of his or her adopter or adopters, and shall

<sup>634</sup>  
Effect of order.

**C. LIII,  
rr. 10-13.**

take his or her surname, as if they had been the natural parents of such child or children. C. S. 1903, c. 112, s. 244.

**635  
Maintenance  
and education  
of child.**

**10.** When the child is so adopted, he shall have the same right to any claim for nurture, maintenance and education upon his so-adopted parents, as if such adopted child were the natural child of such parents. C. S. 1903, c. 112, s. 245.

**636  
Property of  
child dying  
under age or  
intestate.**

**11.** If any such child at the time of adoption be or at any time afterwards become possessed of or entitled to any property, real or personal, (other than such as he or she may become possessed of or entitled to as such adopted child under the provisions of this Order), such property shall in the case of such adopted child dying under age or intestate, go and be distributed to and among such person and persons as the same would have gone to and been distributed amongst had such adoption not taken place; provided that on failure of any person to take as last-mentioned, such property real and personal, shall pass to the adopter or adopters, or to the person or persons who would have been entitled to the same, had the said adopter or adopters been seized, possessed of or entitled to the said property, and died so seized, possessed or entitled. C. S. 1903, c. 112, s. 246.

### III.—*Guardians of Infants, Etc.*

**637  
On death of  
father, mother  
to be guardian  
alone or  
jointly with  
others.**

**12.** On the death of the father of an infant, and in case the father shall have died prior to the commencement of the principal Act, then from and after the commencement of said Act, the mother, if surviving, shall be the guardian of such infant, either alone, when no guardian has been appointed by the father, or jointly with any guardian appointed by the father. When no guardian has been appointed by the father, or if the guardian or guardians appointed by the father is or are dead, or refuses or refuse to act, the Court or a Judge may, if he shall think fit, from time to time, appoint a guardian or guardians to act jointly with the mother. 49 & 50 Vict. c. 27, s. 2, (Imp.).

**638  
Mother may  
appoint guard-  
ian in certain  
cases.**

**13.—(1)** The mother of any infant may by deed or will appoint any person or persons to be guardian or guardians of such infant after the death of herself and the father of such

infant (if such infant be then unmarried), and where guardians are appointed by both parents they shall act jointly. 49 & 50 Vict. c. 27, s. 3 (1), (Imp.).

**O. LIII.  
rr. 14-16.**

(2) The mother of any infant may by deed or will provisionally nominate some fit person or persons to act as guardian or guardians of such infant after her death jointly with the father of such infant, and the Court or a Judge, after her death, if it be shown to the satisfaction of the Court or Judge that the father is for any reason unfitted to be the sole guardian of his children, may confirm the appointment of such guardian or guardians, who shall thereupon be authorized and empowered so to act as aforesaid, or make such other order in respect of the guardianship as the Court or Judge shall think right. 49 & 50 Vict. c. 27, s. 3 (2), (Imp.).

(3) In the event of guardians being unable to agree upon a question affecting the welfare of an infant, any of them may apply to the Court or Judge for its or his direction, and the Court or Judge may make such order or orders regarding the matters in difference as it or he shall think proper. 49 & 50 Vict. c. 27, s. 3 (3), (Imp.).

(4) Every guardian under these Rules shall have all such powers over the estate and person, or over the estate (as the case may be) of an infant, as any guardian appointed by will or otherwise would have under Act 12 Charles II., c. 24. 49 & 50 Vict., c. 27, s. 4, (Imp.).

**Powers of  
guardian.**

14. The Court or a Judge may in its or his discretion, on being satisfied that it is for the welfare of the infant, remove from his office any testamentary guardian, or any guardian appointed or acting by virtue of this Order, and may also, if it shall be deemed to be for the welfare of the infant, appoint another guardian in place of the guardian so removed. 49 & 50 Vict., c. 27, s. 6, (Imp.).

**639  
Power to  
Court to  
remove  
guardian.**

15. An application for the appointment of a guardian of an infant under these Rules shall disclose :—

**640  
Evidence  
upon applica-  
tion for  
appointment  
of guardian.**

- (a) The age of the infant ;
- (b) The nature and amount of the infant's estate and income ;
- (c) The infant's next of kin.

16. Nothing in this Order contained shall interfere with the jurisdiction and powers vested in the Courts of Probate under Chapter 118 of the Consolidated Statutes, 1903.

**641  
Proviso as to  
jurisdiction  
of Probate  
Courts.**

**O. LIII.  
FF. 17, 18.**

<sup>642</sup>  
 Infant seized  
 of land by way  
 of mortgage  
 or trust.

**17.** Whenever any infant shall be seized or possessed of any lands, tenements or hereditaments, by way of mortgage, or in trust only for others, though such trust be an implied or constructive trust, the Court or a Judge, on petition of the guardian of such infant, or of any person interested, or by originating summons, at the instance of such person, may by order enable and compel such infant to convey the same to any other person as may be therein directed. C. S. 1903, c. 112, s. 187, *am.*

<sup>643</sup>  
 Specific per-  
 formance by  
 infant heir.

**18.** The Court or a Judge, on petition of or by originating summons at the instance of the executor of the estate of any person who may have died before the performance of any contract made by him in his lifetime, or of any person interested in such contract, and on hearing the parties, may by order enable and compel the specific performance thereof by any infant heir or other person. Every conveyance made pursuant to an order under this or the next preceding rule, may be executed in the name of any such infant by any person the Court or Judge shall authorize and direct, and shall be as effectual as if made by such infant when of lawful age. C. S. 1903, c. 112, s. 188, *am.*

**O. LIV.  
FF. 1-5.**

<sup>644</sup>  
 Commission  
*de lunatico*  
*inquirendo.*

**ORDER LIV.****COMMISSIONS IN LUNACY.**

(See O. 51, Part III.)

**1.** The Court or a Judge, on application by petition under oath of any person interested, for a commission *de lunatico inquirendo* or *de idioto inquirendo*, may order the same to issue, and upon such order being made the same shall issue under the seal of the Court, directed to the commissioners named in such order. C. S. 1903, c. 112, s. 228.

<sup>645</sup>  
 Commis-  
 sioners.

**2.** The said commission shall be addressed to a Referee or two or more persons, one at least of whom shall be a Referee, and such person or persons or any two of them, one of which two shall be a Referee, shall, after being sworn to the faithful discharge of his or their duties, execute the commission, and such inquisition shall be good and valid, to all intents and purposes, as if the said commission had been directed or addressed to, and the said inquisition returned by three or more commissioners as heretofore. C. S. 1903, c. 112, s. 229.

<sup>646</sup>  
 Proceedings  
 upon inquisi-  
 tion.

**3.** The proceedings thereupon shall be in accordance with the practice heretofore pursued, except that the jury on any

inquisition hereunder shall consist of seven persons, and the commission, inquisition and return shall be filed with the proper officer, and all further proceedings thereupon and in relation thereto shall be had and conducted in the Court or before a Judge. C. S. 1903, c. 112, s. 230.

**§. LIV.  
rr. 4-7.**

4. Instead of issuing a commission *de lunatico inquirendo* or *de idioto inquirendo*, the Court or a Judge may, with or without the aid of a jury (which the Court or Judge may cause to be empanelled as in other cases) hear evidence and inquire into and determine upon the alleged lunacy; but the alleged lunatic shall have a right in such cases to demand that the inquiry be submitted to a jury. R. S. O. 1897, c. 65, s. 5.

**647  
Inquiry by  
Judge.**

5. Where such inquiry is had, no traverse shall be allowed, but the Court or Judge if dissatisfied with the finding of a jury, may, at the instance of any party who would be entitled to traverse an inquisition under commission of lunacy, direct a new trial or new trials from time to time upon application therefor made to the Court or Judge within three months from the time the verdict is rendered, or such further time as the Court or Judge, under special circumstances, permits, and subject to such directions and upon such conditions as to the Court or Judge seems proper, and the Court or Judge may order such new trial to be had before the Court in which the verdict was rendered or before any other Judge. R. S. O. 1897, c. 65, s. 6.

**648  
New trial.**

6. On every such inquiry the alleged lunatic, if he is within the jurisdiction of the Court, shall be produced, and shall be examined at such times and in such manner either in open Court or privately before the jury retire to consult about their verdict as the presiding Judge may direct. R. S. O. 1897, c. 65, s. 7.

**649  
Lunatic to be  
present on  
inquiry.**

7. The Court or a Judge may, on sufficient evidence, declare a person a lunatic without the delay or expense of issuing a commission to inquire into the alleged lunacy, except in cases of reasonable doubt. R. S. O. 1897, c. 65, s. 8.

**650  
Inquiry as to  
lunacy with-  
out commis-  
sion.**

**C. LV.**  
**rr. 1-3.**

**ORDER LV.**

ESTATES OF HABITUAL DRUNKARDS.

<sup>651</sup>  
Petition for  
declaratory  
order.

Service of  
petition and  
order for  
hearing.

<sup>652</sup>  
Hearing of  
petition.

<sup>653</sup>  
Evidence.

1. When a petition under oath shall be presented to the Court or a Judge by the wife or any relative whether by blood or affinity, or in default of such relative by any friend of any habitual drunkard, and indorsed with the name of the petitioner's solicitor, setting forth that such alleged habitual drunkard being a resident of this Province and possessed of or entitled to property, is so given over to drunkenness as to render himself unable to control himself, and is incapable of managing his affairs, or that by reason of such drunkenness he either squanders or mismanages his property or transacts his business prejudicially to the interests of his family, and praying that a hearing and examination of the matters and allegations set forth in the said petition may be had, the Court or a Judge shall direct that a copy of the said petition shall forthwith be served on such alleged habitual drunkard, and with such copy there shall be served an order in the Form No. 55 in Appendix K., signed by the Judge, appointing a time and place for the hearing of the matters and allegations contained in the said petition before the Court or himself, and such service shall be at least fourteen clear days before the time fixed for such hearing, and such petition shall immediately after such service be filed in the office of the proper officer. C. S. 1903, c. 112, s. 267.

2. At the time and place named in the appointment, the Court or a Judge shall proceed to inquire into the matters and allegations set forth in the petition on *viva voce* evidence, and the Court or Judge may in its or his discretion adjourn the said inquiry from time to time. C. S. 1903, c. 112, s. 268, *am.*

3. In the proceeding to the examination of the matters and charges contained in the petition, it shall not be necessary that the person charged with such habitual drunkenness be interrogated before the Court or Judge, though the Court or Judge shall have power to do so if it or he sees fit; but it shall be sufficient that the Court or Judge is satisfied with the evidence given by the relatives or such other persons as are acquainted with the said alleged habitual drunkard. C. S. 1903, c. 112, s. 269.

4. The petitioner, or the alleged habitual drunkard, may issue subpoenas for the attendance of witnesses in like manner and subject to like penalties as in ordinary causes. C. S. 1903, c. 112, s. 271.

<sup>654</sup>  
O. LV.  
FF. 4-7.

<sup>654</sup>  
Subpoenas.

5. If on such hearing the Court or Judge finds the person petitioned against to be an habitual drunkard, and so given over to drunkenness as to render him unable to control himself and incapable of managing his affairs or for the like reason that he squanders or mismanages his property, or transacts his business prejudicially to the interests of his family, a declaratory order shall be made accordingly. C. S. 1903, c. 112, s. 272.

<sup>655</sup>  
Declaratory  
order.

6. The declaratory order provided for by Rule 5 shall forthwith after being made, be filed with the proper officer, and on application made without delay thereafter to the Court or Judge, for the appointment of a committee of the estate of such habitual drunkard, the Court or Judge shall by order in the Form No. 56 in Appendix K., appoint one or more persons to be such committee, who shall give security by bond in the Form No. 57 in Appendix K., with such number of sureties, and in such sum as the Court or Judge shall by such order direct; the sufficiency of such sureties to be approved of by a Referee. The Referee shall indorse on the bond a memorandum of his approval of the sureties, and likewise certify on the order appointing such committee, that the bond required by the said order has been entered into and that he has approved of the sufficiency of the sureties; such bond and order, when so certified, shall forthwith be filed with the proper officer. C. S. 1903, c. 112, s. 274.

<sup>656</sup>  
Filing of  
declaratory  
order.

<sup>657</sup>  
Appointment  
of committee  
of estate of  
drunkard.

7. In case the persons so appointed committee, or any of them, shall refuse or be unable to act, or refuse or be unable to procure and give security as ordered, it shall be lawful for the Court or Judge on being satisfied of the facts to vacate the previous order of appointment, and by a new order appoint other persons to be the committee in the place of those who may have refused or been unable to act or refused or been unable to procure and give security, as the case may be, and so from time to time as often as may be necessary until a committee is appointed and the required security given. C. S. 1903, c. 112, s. 275.

<sup>657</sup>  
Appointment  
of new com-  
mittee.



**C. LV.  
rr. 8-10.**

**658**  
Personal  
estate to vest  
in committee.

**8.** On such committee being appointed, and the bond and order given and certified as provided for by Rule 6, being filed with the proper officer, the right, title and interest of such habitual drunkard of, in and to all personal estate shall vest in such committee, and be dealt with as provided for by this Order in relation to habitual drunkard's estates. C. S. 1903, c. 112, s. 276.

**659**  
Order enjoin-  
ing disposi-  
tion of or  
dealings with  
property.

**9.** It shall be lawful for the Court or Judge, if it or he shall see fit, instead of making the order in the Form No. 56 in Appendix K., to make an order in the Form No. 58 in Appendix K., which order shall have all the force and effect of an injunction order, and all parties guilty of a breach of or disobedience to the said order, shall be punishable by the Court or Judge, and subject to the like penalties and orders as in cases of disobedience to such injunction order. The order may be served upon the registrar of deeds for any county, and a written or printed copy thereof may be posted up in the office of any such registrar, but not elsewhere. When such an order has been granted and the petition dismissed and no declaratory order made, the Court or Judge shall make an order vacating such previous order, and the same shall forthwith be served on any registrar of deeds served with such previous order. It shall also be competent for the Court or Judge at any time on application made, and notice to the petitioner and such other parties as may be directed, and on good cause shown, to dissolve such order or vary the same, so as to exempt from its operation any specific piece or parcel of the property of the alleged habitual drunkard. C. S. 1903, c. 112, s. 277, *am.*

**660**  
When real  
estate to vest  
in committee.

**10.** In all cases where the order in the Form No. 58 shall have been granted and not afterwards dissolved, and a declaratory order shall have been made, on the committee appointed giving a certified bond in accordance with the provisions of Rule 6 duly filed together with a certified order for their appointment, all the right, title, interest, estate, property, claim and demand both legal and equitable, whether in reversion or remainder, possession or expectancy, vested or contingent, of such habitual drunkard of, in, to, out of or upon all freehold and leasehold lands, tenements and hereditaments, and chattels real, situate in any county, and belonging to him

at the time of the service of said order upon the registrar of deeds thereof shall vest in such committee for the purposes of this Order, who shall have and hold the same freed and discharged from any conveyance or assignment thereof by such habitual drunkard subsequent to the service of such order on such registrar of deeds, and freed from any contract or engagement of any kind in reference to the same by such habitual drunkard, made or entered into by him subsequent to the service of such order, either on him or such registrar; provided, however, that nothing in this Rule shall apply to any property exempted from the operation of such order by its terms, or by any subsequent order. C. S. 1903, c. 112, s. 278, *am.*

**O. LV.  
RT. 11, 12.**

Conveyance,  
etc., by drunk-  
ard not to bind  
property.

**11.** In case on presentation of a petition under Rule 1, an order for hearing shall have been granted, and it shall at any time thereafter, and before the filing of the bond and order appointing a committee, certified as before required, be made to appear to the Court or a Judge that the alleged habitual drunkard petitioned against is likely to make any conveyance of his property, real or personal, or dispose of the same, or any part thereof, by sale, mortgage or otherwise, or to make any improvident lease of the same, or any part thereof, or to make any improvident contract or engagement in reference to the same, or any part thereof, the Court or Judge may, on such application made *ex parte*, make an order in the Form No. 59 in Appendix K., which may be served and posted and dealt with in all respects as is hereinbefore provided in cases where an order in the Form No. 58 is granted, and shall have the same force and effect in all respects as is hereinbefore given to such last-mentioned order. The like order may be made by the Court or Judge without special application therefor, at the same time it or he makes the declaratory order. C. S. 1903, c. 112, s. 279.

**661**  
*Ex parte*  
order, before  
appointment  
of committee,  
enjoining  
disposition of  
property.

**12.** In all cases where the order in the Form No. 59 shall have been granted and not afterwards dissolved, and a declaratory order shall have been made, a committee appointed who shall have given the requisite security, and the bond of such committee, with the order for their appointment duly certified, shall have been filed, all the right, title, interest, estate, property, claim and demand, both legal and equitable, whether in remainder or reversion, possession or expectancy, vested or

**662**  
Real estate,  
etc., to vest in  
committee  
subsequently  
to restraining  
order.

**§. LV,  
rr. 12, 14.**

Real estate,  
etc., not bound  
by convey-  
ance, etc., of  
drunkard.

contingent, of such habitual drunkard, of, in, to, out of, or upon all freehold and leasehold lands, tenements and hereditaments, and chattels real, situate in any county and belonging to him at the time of the service of said order upon the registrar of deeds thereof, shall vest in such committee for the purposes of this Order, and they shall have and hold the same freed and discharged from any conveyance or assignment thereof by such habitual drunkard subsequent to the service of such order on such registrar of deeds, and freed from any contract or engagement of any kind made in reference to the same by such habitual drunkard, subsequent to the service of such order either on him or such registrar; provided, however, that nothing in this Rule shall apply to any property exempted from the operation of such order, by its terms or by any subsequent order. C. S. 1903, c. 112, s. 280, *am.*

**§63**  
When real  
estate, etc., to  
vest in com-  
mittee where  
restraining  
order not  
granted.

**13.** In all cases not provided for by Rules 10 and 12 all the interest, title, estate, property, claim and demand, both legal and equitable, whether in remainder or reversion, possession or expectancy, vested or contingent, of any such habitual drunkard of, in, to, out of or upon all freehold and leasehold lands, tenements and hereditaments, and chattels real, situate in any county and which the said habitual drunkard shall have or be entitled to, in such lands, tenements, hereditaments and chattels real at the time of registering in the office of the registrar of deeds for such county a certified copy of the order of appointment as in the next preceding Rule provided, shall for the purposes of this Order vest in the committee of such habitual drunkard, when and so soon as a certified copy of the order of their appointment shall be registered in the office of the said registrar of deeds; and all conveyances and assignments or instruments affecting lands, made or executed by the said habitual drunkard, and all conveyances or assignments of bills of sale of personal chattels made by him, and which are by law required to be registered or filed with the registrar of deeds, shall be void and of no effect, unless registered or filed in the proper registrar's office previous to the registry thereof of a certified copy of such appointment of committee. C. S. 1903, c. 112, s. 281.

Priority of  
conveyance,  
etc., of drunk-  
ard registered,  
etc., previous  
to registration  
of order  
appointing  
committee.

**§64**  
Copy for reg-  
istration of  
order appoint-  
ing committee.

**14.** Whenever any order appointing a committee and the bond given by them, certified as hereinbefore required, shall

be filed with the proper officer, he shall furnish one or more copies thereof and of the certificate thereon, certified under his hand and the seal of the Court, and any copy of such order purporting to be so certified, shall be registered in the office of any registrar of deeds without further proof, in the same manner as conveyances of land are registered. C. S. 1903, c. 112, s. 282.

**15.** No order made under any of the Rules of this Order shall be subject to appeal but the same shall be final and conclusive. C. S. 1903, c. 112, s. 283.

**16.** The Court or Judge making the order under Rule 1, if the parties or their witnesses live at a distance, and in consequence thereof, or for any other reason, it is considered that it would be more convenient and less expensive that the evidence to be given on the hearing of any petition, should be taken before a Referee, may specify in the order for hearing such petition the Referee before whom such evidence shall be taken; and the Referee so designated shall, at a time and place to be named by him and indorsed on the order, proceed to take the evidence of such parties as may be produced before him, with full power to adjourn the matter from time to time as he may think fit. Such Referee shall reduce the evidence taken by him to writing, and transmit the same certified by him, together with the order annexed, to the Court or Judge, on or before the time appointed for that purpose. On such evidence being so returned the Court or Judge, shall, at the time and place for that purpose named in the order, or at such other time and place as may by any other order be named, hear the parties and proceed to adjudicate on the matter in the same manner and to the same effect as though such evidence had been taken before the Court or himself. C. S. 1903, c. 112, s. 284.

**17.** When either of the orders in the Forms Nos. 58, 59, or any order dissolving or varying the same shall be served on any registrar of deeds, he shall mark thereon the date of such service, and file and preserve them in his office on a file to be kept for that purpose, to be open to inspection to any person on payment of a fee of twenty cents. C. S. 1903, c. 112, s. 285.

**§. LV.**  
**rr. 15-17.**

**065**  
No appeal  
from order.

**066**  
Evidence  
before  
Referee.

**Hearing by  
Judge after  
return of  
evidence.**

**067**  
Record by  
Registrar of  
Deeds of date  
of service of  
order.

**§. LV.  
rr. 18-22.**

**668  
Powers of  
committee.**

**18.** The committee of the estate of such habitual drunkard shall deal with the estate, and have the same powers in reference to the same and its management and control as are given to a committee of the estate of any person found of unsound mind under a commission *de lunatico inquirendo* in reference to his estate, and for that purpose Rules 15 to 20 and Rule 22 of Order LI. shall, subject to any specific provision hereinbefore contained, apply to committees of the estate of habitual drunkards and their estates, to the same extent as they apply to committees of the estates of lunatics and their estates. The Court or a Judge may also direct how and in what manner the moneys of such habitual drunkard, coming into the hands of such committee, shall be invested and disposed of and may direct that the same, or part thereof, be appropriated for the support and maintenance of such habitual drunkard or his family. C. S. 1903, c. 112, s. 286, *am.*

**669  
No abatement  
of action to  
which drunk-  
ard a party.**

**19.** No action in any Court to which any person declared to be an habitual drunkard is a party, either as plaintiff or defendant, shall abate by reason of any such committee being appointed, but such action may be continued by or against such committee, if such habitual drunkard be sole plaintiff or defendant, or by or against such committee and such other person or persons as may be plaintiffs or defendants. C. S. 1903, c. 112, s. 287, *am.*

**670  
Exemption  
of trust  
property.**

**20.** No property or estate which the said habitual drunkard holds as a trustee, or over which he has control in any way, under or by virtue of any power of appointment given in any deed or will, shall be affected by any of the provisions of this Order, but the same shall be exempt from the operation of such provisions. C. S. 1903, c. 112, s. 288.

**671  
Choses in  
action.**

**21.** There shall vest in the committee of such habitual drunkard with his personal estate, all choses in action, and all causes of action vested in such habitual drunkard, and such committee may bring actions thereon in their own names. C. S. 1903, c. 112, s. 289, *am.*

**672  
Application  
by drunkard  
to supersede  
order.**

**22.** Any habitual drunkard may at any time after the lapse of six months from the appointment of a committee to his estate, and after thirty days' notice to such committee,

make application to the Court or a Judge for an order annulling and superseding the said declaratory order and order appointing such committee. If on such application the Court or Judge shall find that such habitual drunkard has permanently abandoned his habits of drinking and is capable of managing his affairs and that he is not likely to squander or mismanage his property, or place his family in distress, or transact his business prejudicially to the interests of his family, an order shall be made accordingly. C. S. 1903, c. 112, s. 290.

<sup>673</sup>  
O. LV.  
FF. 23-24.

**23.** The hearing and taking of the evidence on the application mentioned in the preceding Rule, shall be had and proceeded with as near as may be in the manner hereinbefore provided for the hearing and taking of the evidence on a petition presented under Rule 1. C. S. 1903, c. 112, s. 291.

<sup>673</sup>  
Hearing of  
application.

**24.** The order made under Rule 22 shall forthwith be served on the committee, and filed with the proper officer with an affidavit of such service; on the same being filed, a copy thereof certified by the proper officer under the seal of the Court, and without further proof, may be registered in the office of any registrar of deeds in like manner as duly acknowledged deeds are registered. C. S. 1903, c. 112, s. 292.

<sup>674</sup>  
Annuling  
order.

**25.** On a copy of said order certified as aforesaid, being served on such committee, all the personal estate of the habitual drunkard in the hands of such committee, shall revert in him, and on and after such service, all powers of such committee in reference to the real and personal property of such habitual drunkard, and all control over the same, shall cease; and when any copy of such order, certified as aforesaid, shall be registered in the office of any registrar of deeds, all the real estate of such habitual drunkard in such county shall revert in him; provided, however, that all such personal and real estate shall revert subject to all contracts, sales, liens, pledges or incumbrances lawfully made, given or entered into by such committee. C. S. 1903, c. 112, s. 293, *am.*

<sup>675</sup>  
Revesting of  
estate, etc.

**26.** The Court or Judge may, if it or he shall be of opinion that the proceedings taken by any petitioner under Rule 1 are vexatious, order such petitioner to pay the costs; provided that no such costs shall be ordered to be paid by the

<sup>676</sup>  
Costs.

○. LV.  
r. 27.

wife of any alleged habitual drunkard when she is the petitioner. C. S. 1903, c. 112, s. 294.

677  
Evidence to  
be filed.

27. All evidence taken by the Court or Judge or Referee shall be filed with the proper officer. C. S. 1903, c. 112, s. 295, *am.*

○. LVI.  
rr. 1-4.

## ORDER LVI

### TRUSTEES.

678  
Appointment  
or removal of  
trustee.

1. The Court or a Judge on application by or on behalf of a trustee or beneficiary may, in its or his discretion, appoint a person to be a trustee of the trust, either jointly with any other person, or as sole trustee, and, if sufficient cause is shown, or if it shall be deemed expedient by the Court or Judge so to do, may remove any trustee, and appoint a new trustee in his place. C. S. 1903, c. 112, s. 219, *am.*; 59 & 60 Vict. c. 35, s. 1 (1), (*Imp.*), *am.*

679  
Rights and  
liabilities of  
new trustee.

2. There shall be vested in such trustee when so appointed the same rights, and he shall be subject to the same duties and liabilities, and in every way stand in the same position as a trustee appointed by the Court or a Judge under and by virtue of Chapter 162 of the Consolidated Statutes, 1903. Any appointment of a new trustee shall operate no further or otherwise as a discharge to any trustee removed by virtue of this Order, or any former or continuing trustee, than an appointment of new trustees under any power contained in any instrument would have done. C. S. 1903, c. 112, s. 220.

680  
Remunera-  
tion.

3. The Court or a Judge may allow to trustees such compensation or commission for all or any services of such trustees in the matter of their trust, as to such Court or Judge shall seem reasonable, and such compensation or commission may be ordered by such Court or Judge to be retained to such trustees, or paid to them out of the trust property or funds. C. S. 1903, c. 112, s. 221.

681  
Application  
to be by  
originating  
summons.

4. An application to the Court or a Judge to appoint or remove a trustee shall if not made in a pending cause or matter be made by originating summons; and if made in a pending cause or matter, shall be made as part of the relief claimed. J. T. R. 1897, r. 2, (E).

**5. (1) The summons shall be served,—****G. LVI.  
rr. 5, 6.****682  
Service of  
summons.**

- (a) Where the application is made by or on behalf of a trustee, on the other trustee (if any); and
- (b) Where the application is made by or on behalf of a beneficiary, on the trustees (if any); and in either case on such (if any) of the beneficiaries as the Court or Judge directs.

(2) The Court or a Judge may give any directions it or he thinks fit, either dispensing with the service of the summons on any person on whom it is required to be served under this Rule, or requiring the service of the summons on any person on whom it is not required to be served under this Rule. J. T. R. 1897, r. 3, (E).

**6. (1)—**Where an application is made for the appointment or removal of a trustee by originating summons, the applicant must when he takes out the summons, supply for the use of the Court or Judge a written statement signed by him containing the following particulars so far as he can gain information with regard to them :—

**683  
Statement to  
be supplied on  
application.**

- (a) A short description of the trust and instrument by which it is created, and of the relation which the applicant bears to the trust;
- (b) Where a person is nominated as trustee, his name and address and short particulars of his fitness for the position; and where the removal of a trustee is sought, short particulars of the reasons for his removal;
- (c) Short particulars of the trust property, with an approximate estimate of its income and capital value;
- (d) The names and addresses of the beneficiaries and short particulars of their respective interests;
- (e) Any exceptional circumstances specially affecting the administration of the trust.



● LVI,  
IT. 7-9.

(2) An affidavit by the applicant verifying the statement shall be sufficient *prima facie* evidence of the particulars contained in the statement.

(3) Where the applicant cannot gain the information necessary for making the required statement on any point, he must mention the fact in his statement. J. T. R. 1897, r. 4, (E), *am.*

694  
Removal of  
restriction as  
to appoint-  
ment of cer-  
tain persons to  
be trustees.

7. The Court or a Judge shall not be precluded by any existing practice as to the appointment of trustees from appointing any person to be a trustee by reason of that person being a beneficiary, or a relation or husband or wife of a beneficiary, or a solicitor to the trust, or to the trustee, or to any beneficiary, or a married woman, or standing in any special position with regard to the trust. J. T. R. 1897, r. 5 (1), (E).

695  
Vesting  
orders.

8. On the appointment of any person to be a trustee the Court or Judge shall make such vesting or other orders and exercise such other powers as may be necessary for vesting the trust property in the trustee either as sole trustee or jointly with other trustees as the case requires. J. T. R. 1897, r. 6, (E), *am.*

696  
Advice of  
Court to  
trustees on  
originaling  
summons.

9. Any trustee, executor or administrator shall be at liberty, without the institution of an action, to apply by originating summons to the Court or a Judge for the opinion, advice or direction of the Court or a Judge on any question respecting the management or administration of the trust property, or the assets of any testator or intestate; such summons shall be served upon, or the hearing thereof attended by, all persons interested in such application, or such of them as the Court or Judge shall direct to be served, and the application shall be supported by such evidence as the Court or Judge may require; and the trustee, executor or administrator acting upon the opinion, advice or direction given by the Court or Judge, shall be deemed so far as regards his own responsibility, to have discharged his duty as such trustee, executor or administrator in the subject matter of the said application; provided, nevertheless, that nothing herein shall extend to indemnify any trustee, executor or administrator in respect of any act done in accordance with such opinion, advice or direction as aforesaid, if such trustee, executor or administrator shall have

been guilty of any fraud or wilful concealment or misrepresentation in obtaining such opinion, advice or direction. C. S. 1903, c. 112, s. 222, *am.*

O. XVI.  
rr. 10, 11.

**10.** Any person or persons who may be seized of, possessed of or entitled to real estate, leasehold estate or any interest in land, upon trust for the use and enjoyment, or for the benefit *in praesenti* or *in futuro* of any other person or persons, may apply to the Court or a Judge by originating summons for an order to sell and dispose of the said property, and the application shall be supported by such evidence as the Court or Judge may require, and if the disposal of such property, or any part thereof, be necessary for the support of the *cestui que trust* or *cestuis que trustent*, or if the interests of the *cestui que trust* or *cestuis que trustent* will be substantially promoted by its disposal, on account of the property or any part of it being exposed to waste or dilapidation, or being wholly unproductive, or for any other reasonable cause, the Court or Judge may, on the filing of a bond by the trustees or trustee, as the case may be, with such sureties, and to such person or persons, and in such form as shall be directed, order the letting for a term of years, the sale or other disposal by such trustees or trustee of such real estate, leasehold estate or interest in land so held by them or him in trust, in such manner and with such restrictions as shall be deemed expedient. C. S. 1903, c. 112, s. 223, *am.*

<sup>687</sup>  
Sale or letting  
of interest in  
land held in  
trust.

**11.** All sales, leases and conveyances made in good faith by any trustees or trustee in pursuance of such order, shall be effectual if a sale be made, to convey to the purchaser all such title to the property as the trustees or trustee have or has at the time of the sale, but discharged from the trust or trusts affecting the same; and if a lease be made, shall be effectual to give to the lessee during the term of the lease, all such title to the property as the trustees or trustee have or has at the time of the lease, discharged, during the term of such lease from the trust or trusts affecting the same. In any conveyance or lease made under the authority of this Order, it shall not be necessary to recite any part of the proceedings required by this Order, but the same shall briefly refer to the order and the sale, leasing or other disposal of such property. The trustees or trustee shall make and file with the proper officer

<sup>688</sup>  
Effect of sale  
or lease.

Contents of  
deed or lease.

O. LVI.  
rr. 12-14.

a report of any sale or lease made by them or him, under the authority of any such order. C. S. 1903, c. 112, s. 224.

<sup>689</sup>  
Application of  
proceeds of  
sale.

12. Upon any order being made as aforesaid, the Court or Judge may make such order for the investment, disposal or application of the proceeds of the property sold or leased, after payment of costs and expenses, and of the increase and interest arising therefrom, and shall secure the same for the benefit of the *cestui que trust* or *cestuis que trustent*. C. S. 1903, c. 112, s. 225.

<sup>690</sup>  
Interest of  
*cestui que*  
*trust* in pro-  
ceeds.

13. No sale made as aforesaid shall give to any *cestui que trust* any other or greater interest or estate in the proceeds of such sale than he had in the estate so sold. C. S. 1903, c. 112, s. 226.

<sup>691</sup>  
Effect of deed  
or lease.

14. Every conveyance or lease made under the provisions of this Order, duly acknowledged or proved and registered shall be evidence that all the proceedings on which the same is founded were rightly had. C. S. 1903, c. 112, s. 227.

O. LVII.  
rr. 1-4.

## ORDER LVII.

## DECLARATION ON ORIGINATING SUMMONS.

<sup>692</sup>  
Power to  
make declara-  
tions on  
originating  
summons.

1. Any person claiming to be interested under a deed, will or other written instrument, may apply to the Court or a Judge by originating summons for the determination of any question of construction arising under the instrument, and for a declaration of the rights of the persons interested. O. 54*a*, r. 1, (E).

<sup>693</sup>  
Service.

2. The Court or a Judge may direct such persons to be served with the summons as they or he may think fit. O. 54*a*, r. 2, (E).

<sup>694</sup>  
Evidence.

3. The application shall be supported by such evidence as the Court or a Judge may require. O. 54*a*, r. 3, (E).

<sup>695</sup>  
Discretion of  
Court.

4. The Court or Judge shall not be bound to determine any such question of construction if in their or his opinion it ought not to be determined on originating summons. O. 54*a*, r. 4, (E).

## ORDER LVIII.

O. LVIII,  
r. 1.ADMINISTRATIONS AND TRUSTS ; FORECLOSURE AND  
REDEMPTION ; INQUIRIES FOR CREDITORS, ETC.

1. The executors or administrators of a deceased person or any of them, and the trustees under any deed or instrument or any of them, and any person claiming to be interested in the relief sought as creditor, devisee, legatee, next of kin, or heir-at-law of a deceased person, or as *cestui que trust* under the trust of any deed or instrument, or as claiming by assignment or otherwise under any such creditor or other person as aforesaid, may issue, as of course, an originating summons returnable before the Judge in Equity, in Court or in Chambers, for such relief of the nature or kind following, as may by the summons be specified, and as the circumstances of the case may require (that is to say), the determination, without an administration of the estate or trust, of any of the following questions or matters :

896  
Originating  
summons  
relating to  
express trusts  
or the admin-  
istration of  
the estate of  
a deceased  
person.  
[Cf. R. 933, (O)].

- (a) Any question affecting the rights or interests of the person claiming to be creditor, devisee, legatee, next of kin, or heir-at-law, or *cestui que trust* ;
- (b) The ascertainment of any class of creditors, legatees, devisees, next of kin, or others ;
- (c) The furnishing of any particular accounts by the executors or administrators or trustees, and the vouching (when necessary) of such accounts ;
- (d) The payment into court of any money in the hands of the executors or administrators or trustees ;
- (e) Directing the executors or administrators or trustees to do or abstain from doing any particular act in their character as such executors or administrators or trustees ;
- (f) The approval of any sale, purchase, compromise, or other transaction ;
- (g) The determination of any question arising in the administration of the estate or trust. O. 55, r. 3, (E).

**§. LVIII,  
rr. 2, 3.**

697  
Order for ad-  
ministration  
of estate of  
deceased, and  
of trust.  
[Cf. RR. 944,  
950, (O); C. S.  
1903, c. 112, s.  
147].

**2.** Any of the persons named in the last preceding Rule may in like manner apply for and obtain an order for —

- (a) The administration of the personal estate of the deceased ;
- (b) The administration of the real estate of the deceased ;
- (c) The administration of the trust. O. 55, r. 4, (E).

698  
Persons to be  
served.

**3.** The persons to be served with the summons under the preceding rules in the first instance shall be the following (that is to say):

(A) Where  
summons  
issued by  
executor.  
[Cf. R. 939, (O)].

**A.** Where the summons is issued by an executor or administrator or trustee,—

- (a) for the determination of any question, under sub-sections (a), (e), (f), or (g), of Rule 1, the persons, or one of the persons, whose rights or interests are sought to be affected ;
- (b) for the determination of any question under sub-section (b) of Rule 1, any member or alleged member of the class ;
- (c) for the determination of any question, under sub-section (c) of Rule 1, any person interested in taking such accounts ;
- (d) for the determination of any question, under sub-section (d) of Rule 1, any person interested in such money ;
- (e) for relief under sub-section (a) of Rule 2, the residuary legatees, or next of kin, or some of them ;
- (f) for relief under sub-section (b) of Rule 2, the residuary devisees, or heirs, or some of them ;
- (g) for relief under sub-section (c) of Rule 2, the *cestuis que trust*, or some of them ;
- (h) if there are more than one executor or administrator or trustee, and they do not all concur in taking out the summons, those who do not concur ;

- B. Where the summons is issued by any person other than the executors, administrators or trustees, the said executors, administrators, or trustees. O. 55, r. 5, (E).

**O. LVIII,  
rr. 4-10.**

(B) Where summons issued by any other person.

4. Any mortgagee or mortgagor, whether legal or equitable, or any person entitled to or having property subject to a legal or equitable charge, or any person having the right to foreclose or redeem any mortgage, whether legal or equitable, may issue, as of course, an originating summons, returnable before the Judge in Equity in Court or Chambers, for such relief of the nature or kind following as may by the summons be specified, and as the circumstances of the case may require, that is to say:

**699**  
Originating summons for foreclosure, etc.

Sale, foreclosure, delivery of possession by the mortgagor, redemption, reconveyance, delivery of possession by the mortgagee. O. 55, r. 5a., (E).

5. The persons to be served with the summons under the last preceding Rule shall be such persons as under the practice of the Supreme Court in Equity at the commencement of these Rules, would be the proper defendants to an action for the like relief as that specified by the summons. O. 55, r. 5b., (E), *am.*

**700**  
Persons to be served with summons for foreclosure, etc.

6. The Court or a Judge may direct such other persons to be served with the summons as it or he may think fit. O. 55, r. 6, (E).

**701**  
Special directions as to service.  
[R. 940, (O)].

7. The application shall be supported by such evidence as the Court or Judge may require, and directions may be given as it or he may think just for the trial of any questions arising thereout. O. 55, r. 7, (E).

**702**  
Evidence.  
[Cf. R. 941, (O)].

8. It shall be lawful for the Court or a Judge upon such summons to pronounce such judgment as the nature of the case may require. O. 55, r. 8, (E).

**703**  
Judgment summons.  
[Cf. R. 941, (O)].

9. The Court or a Judge may give any special directions touching the carriage or execution of the judgment, or the service thereof upon persons not parties, as it or he may think just. O. 55, r. 9, (E).

**704**  
Carriage and service of judgment.  
[Cf. R. 942, 943, (O)].

10. It shall not be obligatory on the Court or a Judge to pronounce or make a judgment or order, whether on summons

**705**  
Judge not bound to order administration.  
[R. 954, (O)].

**O. LVIII.  
rr. 11-14.**

or otherwise, for the administration of any trust or of the estate of any deceased person, if the questions between the parties can be properly determined without such judgment or order. O. 55, r. 10, (E).

<sup>706</sup>  
Orders which  
may be made  
other than for  
administra-  
tion.  
[R. 965, (O)].

**11.** Upon an application for administration or execution of trusts by a creditor or beneficiary under a will, intestacy, or deed of trust, where no accounts or insufficient accounts have been rendered, the Court or a Judge may, in addition to the powers already existing —

- (a) Order that the application shall stand over for a certain time, and that the executors, administrators, or trustees in the meantime shall render to the applicant a proper statement of their accounts, with an intimation that if this is not done they may be made to pay the costs of the proceedings;
- (b) When necessary, to prevent proceedings by other creditors, or by persons beneficially interested, make the usual judgment or order for administration, with a proviso that no proceedings are to be taken under such judgment or order without leave of the Court or Judge. O. 55, r. 10a., (E).

<sup>707</sup>  
Interference  
with discre-  
tion of trustee.  
[R. 943, (O)].

**12.** The issue of a summons under Rule 1 of this Order shall not interfere with or control any power or discretion vested in any executor, administrator, or trustee, except so far as such interference or control may necessarily be involved in the particular relief sought. O. 55, r. 12, (E).

<sup>708</sup>  
Claimants not  
coming in to  
prove, etc.  
excluded.  
[Cf. R. 670, (O)].

**13.** Where a judgment or order is given or made, whether in Court or in Chambers, directing an account of debts, claims, or liabilities, or an inquiry for heirs, next of kin, or other unascertained persons, unless otherwise ordered, all persons who do not come in and prove their claims within the time, which may be fixed for that purpose by advertisement, shall be excluded from the benefit of the judgment or order. O. 55, r. 44, (E).

<sup>709</sup>  
Advertise-  
ments.  
[Cf. R. 670, (O)].

**14.** Where an advertisement is required for the purpose of any proceeding either in Court or in Chambers or before an official Referee, where a reference is directed, a peremptory advertisement, and only one, shall be issued, unless for any special

reason it may be thought necessary to issue a second advertisement or further advertisements, and any advertisement may be repeated as many times and in such papers as may be directed. O. 55, r. 45, (E), *am.*

**O. LVIII,  
FR. 15-18.**

**15.** The advertisement for claimants and creditors shall be prepared by the solicitor of the party prosecuting the judgment or order, and submitted to the Judge or Referee for approval, and when approved shall be signed by the Judge or Referee, as the case may be, and also shall be signed by the said solicitor. O. 55, r. 46, *am.*

<sup>710</sup>  
By whom advertisements prepared and signed.

**16.** Advertisements for creditors and other claimants shall fix a time within which each claimant, not being a creditor, is to come in and prove his claim, and within which each creditor is to send to the executor or administrator of the deceased, or to the Referee or such other party as the Judge shall direct, or to his solicitor, to be named and described in the advertisement, the name and address of such creditor and the full particulars of his claim, and a statement of his account and the nature of the security (if any) held by him. Such advertisements shall be in one of the Forms Nos. 2 and 3, Appendix L, with such variations as the circumstances of the case may require. At the time of directing such advertisement a time shall be fixed for adjudicating on the claims. O. 55, r. 47, (E).

<sup>711</sup>  
Substance and form of advertisement.  
[Cf. R. 701, (O)].

**17.** No creditor need make any affidavit nor attend in support of his claim (except to produce his security) unless he is served with a notice requiring him to do so as hereinafter provided. O. 55, r. 49, (E).

<sup>712</sup>  
Unless served with notice creditor need not attend.  
[R. 704, (O)].

**18.** Every creditor shall produce the security (if any) held by him before the Judge or Referee at such time as shall be specified in the advertisement for that purpose, being the time appointed for adjudicating on the claims, and every creditor shall, if required, by notice in writing (Form No. 4, in Appendix L) to be given by the executor or administrator of the deceased, or by such other party as the Judge or Referee shall direct, produce all other deeds and documents necessary to substantiate his claim before the Judge or Referee at such time as shall be specified in such notice. O. 55, r. 50, (E), *am.*

<sup>713</sup>  
Creditor to produce securities and evidence of claim, if required.  
[R. 705, (O)].



**§. LVIII.**  
**rr. 19-23.**  
  
714  
Creditor  
neglecting  
notice to lose  
costs.  
[Cf. R. 706, (O)].

**19.** In case any creditor shall neglect or refuse to comply with the last preceding Rule, he shall not be allowed any costs of proving his claim unless the Judge or Referee shall otherwise direct. O. 55, r. 51, (E), *am.*

715  
Examination  
and verifica-  
tion of claims.  
[Cf. R.R. 707,  
708, (O)].

**20.** The executor or administrator of the deceased, or such other party as the Judge or Referee shall direct, shall examine the claims of creditors sent in pursuant to the advertisement, and shall ascertain, so far as he is able, to which of such claims the estate of the deceased is justly liable, and he shall, at least seven clear days prior to the time appointed for adjudication, file an affidavit (Form No. 5, in Appendix L), to be made by such executor or administrator, or one of the executors or administrators, or such other party, either alone or jointly, with his solicitor or other competent person, or otherwise, as the Judge or Referee shall direct, verifying a list of the claims (Form No. 6, in Appendix L), the particulars of which have been sent in pursuant to the advertisement, and stating to which of such claims, or parts thereof respectively, the estate of the deceased is in the opinion of the deponent justly liable, and his belief that such claims, or parts thereof respectively, are justly due and proper to be allowed, and the reasons for such belief. O. 55, r. 52, (E), *am.*

716  
Affidavit  
verifying  
claim may be  
postponed.  
[R. 709, (O)].

**21.** In case the Judge or Referee shall think fit so to direct, the making of the affidavit referred to in the last preceding Rule shall be postponed till after the day appointed for adjudication, and shall then be subject to such directions as the Judge or Referee may give. O. 55, r. 53, (E), *am.*

717  
Adjournment.

Further  
evidence.

**22.** Where on the day appointed for hearing the claims any of them remain undisposed of, an adjournment day for hearing such claims shall be fixed, and where further evidence is to be adduced, a time may be named within which the evidence on both sides is to be closed, and such directions may be given as to the mode in which such evidence is to be adduced. O. 55, r. 54, (E).

718  
Adjudication  
on claims.  
[R. 710, (O)].

**23.** At the time appointed for adjudicating upon the claims of creditors, or at any adjournment thereof, the Judge or Referee may in his discretion allow any of the claims, or any part thereof respectively, without proof by the creditors, and direct such investigation of all or any of the claims not

allowed, and require such further particulars, information, or evidence relating thereto as he may think fit, and may, if he so think fit, require any creditor to attend and prove his claim, or any part thereof, and the adjudication on such claims as are not then allowed shall be adjourned to a time to be then fixed. O. 55, r. 55, (E), *am.*

**O. LVIII,  
rr. 24—28.**

**24.** Notice (Form No. 7, in Appendix L.) shall be given by the executor or administrator, or such other party as the Judge or Referee shall direct, to every creditor whose claim, or any part thereof, has been allowed without proof by the creditor, of such allowance, and to every such creditor as the Judge or Referee shall direct to attend and prove his claim or such part thereof as is not allowed by a time to be named in such notice (Form No. 8, in Appendix L.), not being less than seven days after such notice, and to attend at a time to be therein named being the time to which the adjudication thereon shall have been adjourned, and in case any creditor shall not comply with such notice, his claim, or such part thereof as aforesaid, shall be disallowed. O. 55, r. 56, (E), *am.*

**719  
Notice to  
creditors of  
claims allowed  
or disallowed.  
[Cf. R. 711, (O)].**

**25.** After the time fixed by the advertisement no claims shall be received (except as hereinbefore provided in case of an adjournment), unless the Judge or Referee shall think fit to give special leave, upon application made by summons, and then upon such terms and conditions as to costs and otherwise as the Judge or Referee shall think fit. O. 55, r. 57, (E), *am.*

**720  
Claims after  
expiry of  
time.  
[Cf. R. 713, (O)].**

**26.** A creditor who has come in and established his debt under any judgment or order shall be entitled to the costs of so establishing his debt, and the sum to be allowed for such costs shall be fixed by the Judge or Referee, unless he shall think fit to direct the taxation thereof, and the amount of such costs, or the sum allowed in respect thereof, shall be added to the debt so established. O. 55, r. 58, (E), *am.*

**721  
Costs of credi-  
tor establish-  
ing his debt.**

**27.** A list of all claims allowed shall, when required by the Judge or Referee, be made out and left in the Judge's or Referee's chambers by the person who examines the claims. O. 55, r. 59, (E), *am.*

**722  
List of claims  
allowed.**

**28.** Every notice by this Order required to be given to creditors or other claimants shall, unless the Judge or Referee shall otherwise direct, be deemed sufficiently given and served

**723  
Service of  
notices under  
order.**

**O. LVIII.  
rr. 29-33.**

if transmitted by the post prepaid to the creditor or other claimant to be served according to the address given in the claim sent in by him pursuant to the advertisement, or in case such creditor or other claimant shall have employed a solicitor, to such solicitor according to the address given by him. O. 55, r. 61, (E).

**724  
Computation  
of interest on  
debts bearing  
interest.  
[Cf. R. 703, (O)].**

**29.** Where a judgment or order is made directing an account of the debts of a deceased person, unless otherwise ordered, interest shall be computed on such debts as to such of them as carry interest after the rate they respectively carry and as to all others after the rate of five per cent. per annum from the date of the judgment or order. O. 55, r. 62, (E).

**725  
Allowance of  
interest on  
debts not  
carrying  
interest.**

**30.** A creditor whose debt does not carry interest, who comes in and establishes the same before the Judge in Chambers or Referee under a judgment or order of the Court or of a Judge, shall be entitled to interest upon his debt at the rate of five per cent. per annum from the date of the judgment or order out of any assets which may remain after satisfying the costs of the cause or matter, the debts established, and the interest of such debts as by law carry interest. O. 55, r. 63, (E).

**726  
Interest on  
legacies.  
[Cf. R. 703, (O)].**

**31.** Where a judgment or order is made directing an account of legacies, interest shall be computed on such legacies after the rate of five per cent. per annum from the end of one year after the testator's death, unless otherwise ordered, or unless any other time of payment or rate of interest is directed by the will, and in that case according to the will. O. 55, r. 64, (E).

**727  
Powers of  
Referee.**

**32.** A Referee shall have for the purpose of taking accounts, making inquiries and of any other proceedings to be taken before him, full power to issue advertisements, to summon parties and witnesses, to administer oaths, to require the production of documents, to take affidavits and acknowledgments, other than acknowledgments by married women, and when so directed by the Judge, to examine parties and witnesses, either upon interrogatories or *nova voce*, as the Judge shall direct. O. 55, r. 16, (E), *am.*

**728  
Duty of  
witnesses to  
attend before  
Referee.**

**33.** Parties and witnesses summoned to attend before a Referee shall be bound to attend in pursuance of the summons

and shall be liable to process of contempt in like manner as parties or witnesses are liable thereto in case of disobedience to any order of the Court, or in case of default in attendance, in pursuance of any order of the Court, or of any writ of *subpoena ad testificandum*, and all persons swearing or affirming before any Referee shall be liable to all such penalties, punishments, and consequences for any wilful and corrupt false swearing or affirming contained therein, as if the matters sworn or affirmed had been sworn and affirmed before any other person by law authorized to administer oaths, to take affidavits, and to receive affirmations. O. 55, r. 17, (E), *am.*

**O. LVIII,  
rr. 34, 35.**

**34.** Where an account is directed the Referee's report shall state the result of such account, and not set the same out by way of schedule, but shall refer to the account verified by the affidavit filed, and shall specify by the numbers attached to the items in the account which, if any, of such items have been disallowed or varied, and shall state what additions, if any, have been made by the way of surcharge or otherwise, and where the account verified by the affidavit has been so altered that it is necessary to have a fair transcript of the account as altered, such transcript may be required to be made by the party prosecuting the judgment or order, and shall then be referred to by the report. The accounts and the transcripts (if any) referred to by certificates shall be attached thereto. No copy of any such account shall be required to be taken by any party. O. 55, r. 68, (E), *am.* See O. 33, *ante*.

**730  
Report on  
account.**

**35.** The Forms Nos. 10 to 20 in Appendix L. shall be used for the respective purposes therein mentioned, with such variations as circumstances may require.

**730**

## ORDER LIX.

**O. LIX,  
r. 1.**

### INTERPLEADER.

#### 1. Relief by way of interpleader may be granted —

- (a) Where the person seeking relief (in this Order called the applicant) is under liability for any debt, money, goods, or chattels, for or in respect of which

**731  
When relief by  
interpleader  
granted.  
(R. 1103, (O)).**

**O. LIX.**  
**rr. 2-5.**

he is, or expects to be, sued by two or more parties (in this Order called the claimants) making adverse claims thereto ;.

- (b) Where the applicant is a sheriff or other officer charged with the execution of process by or under the authority of the Court, and claim is made to any money, goods, or chattels taken or intended to be taken in execution under any process, or to the proceeds or value of any such goods or chattels by any person other than the person against whom the process issued O. 57, r. 1, (E).

<sup>732</sup>  
Matters to be  
proved by  
applicant.  
[R. 1104, (O)].

**2.** The applicant must satisfy the Court or a Judge by affidavit or otherwise —

- (a) That the applicant claims no interest in the subject-matter in dispute, other than for charges or costs ; and
- (b) That the applicant does not collude with any of the claimants ; and
- (c) That the applicant, except where he is a sheriff or other officer charged with the execution of process by or under the authority of the Court, who has seized goods and who has withdrawn from possession in consequence of the execution creditor admitting the claim of the claimant under Rule 16 of this Order, is willing to pay or transfer the subject-matter into Court, or to dispose of it as the Court or a Judge may direct. O. 57, r. 2, (E).

<sup>733</sup>  
Adverse titles  
of claimants.  
[R. 1105, (O)].

**3.** The applicant shall not be disentitled to relief by reason only that the titles of the claimants have not a common origin, but are adverse to and independent of one another. O. 57, r. 3, (E).

<sup>734</sup>  
When applica-  
tion to be  
made by a  
defendant.  
[R. 1106, (O)].

**4.** Where the applicant is a defendant, application for relief may be made at any time after service of the writ of summons. O. 57, r. 4, (E).

<sup>735</sup>  
Summons by  
applicant.  
[R. 1107, (O)].

**5.** The applicant may take out a summons calling on the claimants to appear and state the nature and particulars of their claims, and either to maintain or relinquish them. O. 57, r. 5, (E).

6. If the application is made by a defendant in an action the Court or a Judge may stay all further proceedings in the action. O. 57, r. 6, (E).

O. LIX,  
rr. 6-11.  
738  
Stay of action.  
[R. 1108, (O)].

7. If the claimants appear in pursuance of the summons, the Court or a Judge may order either that any claimant be made a defendant in any action already commenced in respect of the subject-matter in dispute in lieu of or in addition to the applicant, or that an issue between the claimants be stated and tried, and in the latter case may direct which of the claimants is to be plaintiff and which defendant. O. 57, r. 7, (E).

737  
Order upon  
summons.  
[R. 1108, (O)].

8. The Court or a Judge may, with the consent of both claimants or on the request of any claimant, if, having regard to the value of the subject-matter in dispute, it seems desirable so to do, dispose of the merits of their claims, and decide the same in a summary manner and on such terms as may be just. O. 57, r. 8, (E).

738  
Disposal of  
matter in  
summary  
manner.  
[R. 1110, (O)].

9. Where the question is a question of law, and the facts are not in dispute, the Court or a Judge may either decide the question without directing the trial of an issue, or order that a special case be stated for the opinion of the Court or Judge. If a special case is stated, Order XXXIV. shall, as far as applicable, apply thereto. O. 57, r. 9, (E).

739  
Questions of  
law.  
[R. 1111, (O)].

10. If a claimant, having been duly served with a summons calling on him to appear and maintain, or relinquish, his claim, does not appear in pursuance of the summons, or, having appeared, neglects or refuses to comply with any order made after his appearance, the Court or a Judge may make an order declaring him, and all persons claiming under him, forever barred against the applicant, and persons claiming under him, but the order shall not affect the rights of the claimants as between themselves. O. 57, r. 10, (E).

740  
Failure of  
claimant to  
appear, or  
neglect to obey  
summons.  
[R. 1108, (O)].

11. Except where otherwise provided by statute, the judgment in any action or on any issue ordered to be tried or stated in an interpleader proceeding, and the decision of the Court or a Judge in a summary way, under Rule 8 of this Order, shall be final and conclusive against the claimants, and

741  
Order under  
Rule 8, final.

**O. LIX,  
rr. 12-16.**

all persons claiming under them, unless by special leave of the Court or a Judge, as the case may be, or of the Court of Appeal. O. 57, r. 11, (E).

<sup>742</sup>  
Order for sale  
of goods seized  
in execution.  
[R. 1112, (O)].

**12.** When goods or chattels have been seized in execution by a sheriff or other officer charged with the execution of process of the Court, and any claimant alleges that he is entitled, under a bill of sale or otherwise, to the goods or chattels by way of security for debt, the Court or a Judge may order a sale of the whole or a part thereof, and direct the application of the proceeds of the sale in such manner and upon such terms as may be just. O. 57, r. 12, (E).

<sup>743</sup>  
Application of  
OO. 31, 35.  
[R. 1114, (O)].

**13.** Orders XXXI. and XXXV. shall, with the necessary modifications, apply to an interpleader issue; and the Court or Judge who tries the issue may finally dispose of the whole matter of the interpleader proceedings, including all costs not otherwise provided for. O. 57, r. 13, (E).

<sup>744</sup>  
Title of order.  
[R. 1117, (O)].

**14.** Where in any interpleader proceeding it is necessary or expedient to make one order in several causes or matters pending before different Judges, such order may be made by the Court or Judge before whom the interpleader proceeding may be taken, and shall be entitled in all such causes or matters; and any such order (subject to the right of appeal) shall be binding on the parties in all such causes or matters. O. 57, r. 14, (E), *am.*

<sup>745</sup>  
Costs, etc.  
[R. 1122, (O)].

**15.** The Court or a Judge may, in or for the purposes of any interpleader proceedings, make all such orders as to costs and all other matters as may be just and reasonable. O. 57, r. 15, (E).

<sup>746</sup>  
Sheriff's costs.  
[R. 1115, (O)].

**16.** Where a claim is made to or in respect of any goods or chattels taken in execution under the process of the Court it shall be in writing, and upon the receipt of the claim the sheriff or his officer shall forthwith give notice thereof to the execution creditor according to Form 25 in Appendix B., or to the like effect, and the execution creditor shall, within four days after receiving the notice, give notice to the sheriff or his officer that he admits or disputes the claim, according to Form 26 in Appendix B., or to the like effect. If the execution creditor admits the title of the claimant, and

gives notice as directed by this Rule, he shall only be liable to such sheriff or officer for any fees and expenses incurred prior to the receipt of the notice admitting the claim. O. 57, r. 16, (E).

**O. LIX,  
rr. 17, 18.**

**17.** When the execution creditor has given notice to the sheriff or his officer that he admits the claim of the claimant, the sheriff may thereupon withdraw from possession of the goods claimed, and may apply for an order protecting him from any action in respect of the said seizure and possession of the said goods, and the Judge may make any such order as may be just and reasonable in respect of the same, provided always, that the claimant shall receive notice of such intended application, and if he desires it may attend the hearing of the same, and if he attend the Judge may, in and for the purposes of such application, make all such orders as to costs as may be just and reasonable. O. 57, r. 16*a*., (E).

<sup>747</sup>  
Withdrawal  
by Sheriff.

**18.** Where the execution creditor does not in due time, as directed by the last preceding Rule, admit or dispute the title of the claimant to the goods or chattels, and the claimant does not withdraw his claim thereto by notice in writing to the sheriff or his officer, the sheriff may apply for an interpleader summons to be issued, and should the claimant withdraw his claim by notice in writing to the sheriff or his officer, or the execution creditor in like manner serve an admission of the title of the claimant prior to the return day of such summons, and at the same time give notice of such admission to the claimant, the Judge may, in and for the purposes of the interpleader proceedings, make all such orders as to costs, fees, charges, and expenses, as may be just and reasonable. O. 57, r. 17, (E).

<sup>748</sup>  
Costs.  
[R. 1116, (O)].

## ORDER LX.

### MOTIONS AND OTHER APPLICATIONS.

**O. LX,  
rr. 1, 2.**

**1.** Where an application is authorized to be made to the Court or a Judge, such application, if made to the Court of Appeal or to a Judge in Court, shall be made by motion unless otherwise provided. O. 52, r. 1, (E), *am*.

<sup>749</sup>  
Application to  
Court or  
Judge to be  
by motion.  
[R. 353, (O)].

**2.** No motion or application for a rule *nisi* or order to show cause shall hereafter be made in any action, or (a) to

<sup>750</sup>  
Restriction on  
rules *nisi* and  
orders to show  
cause.  
[Cf. R. 353, (O)]



**G. R.  
r. 3-4.**

set aside, remit, or enforce an award, or (b) for attachment, or (c) to answer the matters in an affidavit, or (d) against a Sheriff to pay money levied under an execution. O. 52, r. 2, (E), *am.*

**751  
When notice  
of motion to  
be given.  
[R. 356, 357,  
358, (O)].**

3. Except where according to the practice existing at the time of the passing of the principal Act any order or rule might be made absolute *ex parte* in the first instance, and except where notwithstanding Rule 2, a motion or application may be made for an order to show cause only, no motion shall be made without previous notice to the parties affected thereby. But the Court or a Judge, if satisfied that the delay caused by proceeding in the ordinary way would or might entail irreparable or serious mischief, may make any order *ex parte* upon such terms as to costs or otherwise, and subject to such undertaking, if any, as the Court or Judge may think just; and any party affected by such order may move to set it aside. O. 52, r. 3, (E).

***Ex parte*  
application.**

**752  
When grounds  
of notice of  
motion to be  
stated.  
[Cf. R. 363, (O)].**

4. Every notice of motion to set aside, remit, or enforce an award, or for attachment, shall state in general terms the grounds of the application; and, where any such motion is founded on evidence by affidavit, a copy of any affidavit intended to be used shall be served with the notice of motion. O. 52, r. 4, (E), *am.*

**753  
Length of  
notice of  
motion.  
[Cf. R. 348, (O)].**

5. Unless the Court or a Judge give special leave to the contrary there must be at least six clear days between the service of a notice of motion and the day named in the notice for hearing the motion; provided that in applications to answer the matters in an affidavit the notice of motion shall be served on the parties not less than ten clear days before the time fixed by the notice for making the motion. O. 52, r. 5, (E), *am.*

**754  
Motion may  
be dismissed  
or adjourned  
where nec-  
essary notice  
not given.  
[R. 360, (O)].**

6. If on the hearing of a motion or other application the Court or a Judge shall be of opinion that any person to whom notice has not been given ought to have or to have had such notice, the Court or Judge may either dismiss the motion or application, or adjourn the hearing thereof, in order that such notice may be given, upon such terms, if any, as the Court or Judge may think fit to impose. O. 52, r. 6, (E).

**755  
Adjournment  
of hearing.**

7. The hearing of any motion or application may from time to time be adjourned upon such terms, if any, as the Court or Judge shall think fit. O. 52, r. 7, (E).

8. The plaintiff shall, without any special leave, be at liberty to serve any notice of motion or other notice or any petition or summons upon any defendant who, having been duly served with a writ of summons to appear, has not appeared within the time limited for that purpose. O. 52, r. 8, (E).

<sup>756</sup>  
O. 52,  
rr. 8-12.

<sup>756</sup>  
Service of  
notice on  
defendant  
served with  
writ but not  
appearing.

9. The plaintiff may without leave serve a notice of motion for an injunction, and may by leave of the Court or a Judge, to be obtained *ex parte*, serve any other notice of motion upon any defendant along with the writ of summons, or at any time after service of the writ of summons and before the time limited for the appearance of such defendant. O. 52, r. 9, (E), *am.*; R. 361, (O).

<sup>757</sup>  
Service of  
notice with  
writ or before  
time for  
appearance.

10. No order shall issue for the return of any writ or order for replevin, or to bring in the body of a person ordered to be attached, arrested or committed; but a notice from the person issuing the writ, or obtaining the order for replevin, attachment, arrest, or committal (if not represented by a solicitor, or by his solicitor, calling upon the sheriff to return such writ or order, or to bring in the body within a given time, if not complied with, shall entitle such person to apply for an order for the committal of such sheriff. O. 52, r. 11, (E), *am.*

<sup>758</sup>  
Notice to  
Sheriff to  
return writ,  
etc.  
(Cf. R. 1045 (1),  
(O)).

11. Where any sheriff, before going out of office, arrest any defendant, and render return of *cepi corpus*, he may be called upon by a notice, as provided by the next preceding rule, to bring in the body within the time allowed by law, although he is out of office when such notice is given. O. 52, r. 12, (E); R. S. C. H. T. 1841.

<sup>759</sup>  
Notice to ex-  
Sheriff to  
bring in body.  
(Cf. R. 1045 (1),  
(O)).

12. Every order, if and when drawn up, shall be dated the day of the week, month, and the year, on which the same was made, unless the Court or a Judge otherwise direct, and shall take effect accordingly. O. 52, r. 13, (E).

<sup>760</sup>  
Date of order  
when drawn  
up.  
(Cf. R. 629 (1),  
(O)).

13. Where an order has been made not embodying any special terms, nor including any special directions, but simply enlarging time for taking any proceeding or doing any act or giving leave (*a*) for the issue of any writ other than a writ of attachment, (*b*) for the amendment of any writ or pleadings, (*c*) for the filing of any document, or (*d*) for any act to be done by any officer of the Court other than a solicitor, it shall

<sup>761</sup>  
Orders that  
need not be  
drawn up.

**O. LX.**  
**rr. 14, 15.**

not be necessary to draw up such order unless the Court or a Judge shall otherwise direct; but the production of a note or memorandum of such order, signed by a Judge, shall be sufficient authority for such enlargement of time, issue, amendment, filing, or other act. A direction that the costs of such order shall be costs in any cause or matter shall not be deemed a special direction within the meaning of this rule. The solicitor of the person on whose application such order is made, shall forthwith deliver a copy of such note or memorandum to such person (if any) as would, if this rule had not been made, have been required to be served with such order. O. 52, r. 14, (E), *am.*

762  
Statement of  
persons to be  
served with  
petition.

**14.** At the foot of every petition (not being a petition of course) presented to the Court or a Judge, and of every copy thereof, a statement shall be made of the persons, if any, intended to be served therewith, and if no person is intended to be served, a statement to that effect shall be made at the foot of the petition and of every copy thereof. O. 52, r. 16, (E).

763  
Length of  
notice of  
petition.  
[Cf. R. 348, (O)].

**15.** Unless the Court or a Judge gives leave to the contrary there must be at least six clear days between the service and the day appointed for hearing a petition. O. 52, r. 17, (E), *am.*

**O. LXI.**  
**rr. 1-3.**

**ORDER LXI.**

**APPLICATIONS AND PROCEEDINGS AT CHAMBERS.**

764  
Applications  
at Chambers  
by summons.

**1.** Every application at Chambers not made *ex parte* shall be made by summons, unless otherwise provided. In this order, where originating summons is not referred to, the word "summons" shall mean a summons signed and granted by a Judge. O. 54, r. 1, (E), *am.*

765  
*Ex parte*  
applications  
by Judge's  
summons.

**2.** Every application for payment or transfer out of court made *ex parte*, and every other application made *ex parte* in which the Judge or proper officer shall think fit so to require, shall be made by summons. O. 54, r. 2, (E).

766  
Form and  
issue of  
originating  
summons.

**3.** An originating summons shall be in the Form No. 2 or 3, Appendix K., to these Rules, with such variations as circumstances may require. It shall be signed and sealed by the proper officer and shall be prepared and issued by the applicant or his solicitor. O. 54, r. 4*b.*, (E), *am.*

4. The parties served with an originating summons shall, except as hereinafter provided, before they are heard, appear thereto as to an action commenced by a writ of summons. A party so served may appear at any time before the hearing of the summons. If he appears at any time after the time limited by the summons for appearance he shall not, unless the Court or a Judge shall otherwise order, be entitled to any further time for any purpose, than if he had appeared according to the summons. O. 54, r. 4, (E), *am.*

O. LXL,  
rr. 4-6.

767  
Appearance to  
originating  
summons.

5. The day and hour for attendance under an originating summons to which an appearance is required to be entered shall after appearance be fixed by notice. Such notice shall be in Form No. 4, Appendix K. The notice shall be served on the defendant or respondent by delivering a copy thereof to the solicitor of the defendant or where the defendant or respondent appears in person at the address for service named in the memorandum of appearance of such defendant or respondent, and shall be served not less than six clear days before the return day. The day and hour and place for the hearing of an *ex parte* summons shall be fixed by the Judge before whom the matter is to be heard. O. 54, r. 4*l.*, (E), *am.*

768  
Attendance  
under origin-  
ating sum-  
mons.

6. Every summons, not being an originating summons to which an appearance is required to be entered, shall be served six clear days before the return thereof, unless in any case it shall be otherwise ordered. Provided that in case of summonses for time only, the summons may be served two clear days previous to the return thereof. O. 54, r. 4*e.*, (E).

769  
Service of  
summons not  
being originat-  
ing summons.

7. Where any of the parties to a summons fail to attend, whether upon the return of the summons, or at any time appointed for the consideration or further consideration of the matter, the Judge may proceed *ex parte*, if, considering the nature of the case, he think it expedient so to do; no affidavit of non-attendance shall be required or allowed, but the Judge may require such evidence of service as he may think just. O. 54, r. 5, (E).

770  
Proceeding *ex  
parte* where  
any party fails  
to attend.

8. Where the Judge has proceeded *ex parte*, such proceeding shall not in any manner be reconsidered in the Judge's Chambers, unless the Judge shall be satisfied that the party failing to attend was not guilty of wilful delay or negligence;

771  
Reconsidera-  
tion of *ex parte*  
proceedings.

**O. LXXI.  
rr. 9-14.**

and in such case the costs occasioned by his non-attendance shall be in the discretion of the Judge, who may fix the same at the time, and direct them to be paid by the party or his solicitor before he shall be permitted to have such proceeding reconsidered, or make such other order as to such costs as he may think just. O. 54, r. 6, (E).

**772  
Costs where  
non-attend-  
ance of any  
party.**

9. Where a proceeding in Chambers fails by reason of the non-attendance of any party, and the Judge does not think it expedient to proceed *ex parte*, the Judge may order such an amount of costs (if any) as he shall think reasonable to be paid to the party attending by the absent party. O. 54, r. 7, (E), *am.*

**773  
Further  
attendance  
where sum-  
mons not fully  
disposed of.**

10. Where matters in respect of which summonses have been issued are not disposed of upon the return of the summons, the parties shall attend from time to time, without further summons, at such time or times as may be appointed for the consideration or further consideration of the matter. O. 54, r. 8, (E),

**774  
What matter  
to be included  
in summons.**

11. In every cause or matter where any party thereto makes any application at Chambers, either by way of summons or otherwise, he shall be at liberty to include in one and the same application, all matters upon which he then desires the order or directions of the Court or Judge; and upon the hearing of such application it shall be lawful for the Court or Judge to make any order and give any directions relative to or consequential on the matter of such application as may be just; any such application may, if the Judge thinks fit, be adjourned from Chambers into Court, or from Court into Chambers. O. 54, r. 9, (E).

**Adjournment  
into Court or  
into Cham-  
bers.**

**775  
Form of  
Judge's  
summons.**

12. A summons other than an originating summons shall be in the Form No. 1 in Appendix K., with such variations as circumstances may require. O. 54, r. 10, (E), *am.*

**776  
Judge may  
require dis-  
tinct solicitor  
to represent  
parties.**

13. Whenever in any proceeding in Chambers the same solicitor is employed for two or more parties, the Judge may require that any of said parties shall be represented by a distinct solicitor, and adjourn such proceedings until such party is so represented. O. 55, r. 41, (E).

**777  
Assistance of  
experts.**

14. The Judge in Chambers may in such way as he thinks fit, obtain the assistance of accountants, merchants, engineers,

actuaries, and other scientific persons the better to enable any matter at once to be determined, and he may act upon the certificate of any such person. O. 55, r. 19, (E). o. LXI.  
rr. 18-19.

15. An appeal from the decision of a Judge at Chambers shall be to the Court of Appeal. See O. 54, r. 23, (E). <sup>778</sup>  
Appeal from  
Chambers.

16. Every appeal from any decision at Chambers shall be by motion, and shall be made within twenty days after the decision appealed against, or, if no Court to which such appeal can be made shall sit within such twenty days, then on the first day on which any such Court may be sitting after the expiration of such twenty days. O. 54, r. 24, (E), *am.* <sup>779</sup>  
Appeal to be  
by motion  
within twenty  
days.

17. An order shall be in the Form No. 6, in Appendix K, with such variations as circumstances require. O. 54, r. 29, (E), *am.* <sup>780</sup>  
Form of order.

18. The Court may adjourn for consideration in Chambers any motion or matter brought before it which should have been brought on in Chambers or which, though properly brought on in Court, may, in the opinion of the Court, be disposed of more conveniently in Chambers; and any motion or matter brought on in Chambers may similarly be adjourned into Court from Chambers by the Judge before whom the same is brought on; and any such adjournment shall be subject to such order as to costs or otherwise as may seem just. R. 367, (O). <sup>781</sup>  
Matters may  
be adjourned  
from Court to  
Chambers and  
*vice versa.*

19. A Judge sitting in Chambers may exercise the same power and jurisdiction in respect to all business as is exercised by the Court; all orders made by a Judge in Chambers shall have the force and effect of orders of the Court. R. 368, (O), *am.* <sup>782</sup>  
Judge in  
Chambers  
may exercise  
powers of  
Court.

## ORDER LXII.

o. LXII.

### CONSOLIDATION OF ACTIONS.

Causes or matters may be consolidated by order of the Court or a Judge in the manner in use in Superior Courts at common law. O. 49, r. 8, (E), *am.* <sup>783</sup>  
Consolidation  
of causes or  
matters.  
[Cf. R. 435, (O)].

**O. LXIII,  
rr. 1-3.****ORDER LXIII.****COMPOUNDING PENAL ACTIONS.**

<sup>784</sup>  
Leave to com-  
pound penal  
actions.  
[Cf. R. 436, (O)].

**1.** Leave to compound a penal action shall not be given in cases where part of the penalty goes to the Crown, unless notice shall first have been given to the proper officer. O. 50, r. 13, (E), *am.*

<sup>785</sup>  
Order for  
compounding.  
[R. 437, (O)].

**2.** The order to compound a penal action shall expressly state that the defendant undertakes to pay the sum for which the Court has given him leave to compound the action. O. 50, r. 14, (E), *am.*

<sup>786</sup>  
Crown's pro-  
portion of  
composition.  
[Cf. R. 438, (O)].

**3.** Where leave is given to compound a penal action, the proportion of the Crown in the composition shall, unless otherwise ordered, be paid to the Receiver-General for the use of His Majesty. O. 50, r. 15, (E), *am.*

**O. LXIV,  
rr. 1, 2.****ORDER LXIV.****ARBITRATION AND REFERENCES**

<sup>787</sup>  
Submission to  
be irrevocable  
and to have  
effect as an  
order of Court.

**1.** A submission, unless a contrary intention is expressed therein, shall be irrevocable, except by leave of the Court or a Judge, and shall have the same effect in all respects as if it had been made an order of Court. 52 & 53 Vict. c. 49, s. 1, (Imp.).

<sup>788</sup>  
Provisions  
implied in  
submission.

**2.** A submission, unless a contrary intention is expressed therein, shall be deemed to include the following provisions, so far as they are applicable to the reference under the submission :—

(a) If no other mode of reference is provided, the reference shall be to a single arbitrator ;

(b) If the reference is to two arbitrators, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award ;

(c) The arbitrators shall make their award in writing within three months after entering on the reference, or after having been called on to act by

O. LXIV,  
r. 2—Con.

notice in writing from any party to the submission, or on or before any later day to which the arbitrators, by any writing signed by them, may from time to time enlarge the time for making the award ;

- (d) If the arbitrators have allowed their time or extended time to expire without making an award, or have delivered to any party to the submission, or to the umpire a notice in writing, stating that they cannot agree, the umpire may forthwith enter on the reference in lieu of the arbitrators ;
- (e) The umpire shall make his award within one month after the original or extended time appointed for making the award of the arbitrators has expired, or on or before any later day to which the umpire by any writing signed by him may from time to time enlarge the time for making his award ;
- (f) The parties to the reference, and all persons claiming through them respectively, shall, subject to any legal objection, submit to be examined by the arbitrators or umpire, on oath or affirmation, in relation to the matters in dispute, and shall, subject as aforesaid, produce before the arbitrators or umpire, all books, deeds, papers, accounts, writings, and documents within their possession or power respectively which may be required or called for and do all other things which during the proceedings on the reference the arbitrators or umpire may require ;
- (g) The witnesses on the reference shall, if the arbitrators or umpire think fit, be examined on oath or affirmation ;
- (h) The award to be made by the arbitrators or umpire shall be final and binding on the parties and the persons claiming under them respectively ;
- (i) The costs of the reference and award shall be in the discretion of the arbitrators or umpire, who may direct to and by whom and in what manner those costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid or



**G. LXIV.  
IT. 3-5.**

any part thereof, and may award costs to be paid as between solicitor and client. 52 & 53 Vict. c. 49, s. 2, (Imp.), and schedule.

789  
Reference to  
Official  
Referee.

3. Where a submission provides that the reference shall be to an official referee, any official referee to whom application is made shall, subject to any order of the Court or a Judge as to transfer or otherwise, hear and determine the matters agreed to be referred. 52 & 53 Vict. c. 49, s. 3, (Imp.).

790  
Power to stay  
proceedings  
where there is  
submission.

4. If any party to a submission, or any person claiming through or under him, commences any legal proceedings in any Court against any other party to the submission, or any person claiming through or under him, in respect of any matter agreed to be referred, any party to such legal proceedings may at any time after appearance, and before delivering any pleadings or taking any other steps in the proceedings, apply to that Court to stay the proceedings, and that Court or a Judge thereof if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the submission, and that the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the proceedings. 52 & 53 Vict. c. 49, s. 4, (Imp.).

791  
Power to the  
Court in cer-  
tain cases to  
appoint an  
arbitrator,  
umpire, or a  
third arbitra-  
tor.

5. In any of the following cases :—

- (a) Where a submission provides that the reference shall be to a single arbitrator, and all the parties do not after differences have arisen concur in the appointment of an arbitrator ;
- (b) If an appointed arbitrator refuses to act, or is incapable of acting, or dies, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties do not supply the vacancy ;
- (c) Where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator and do not appoint him ;

- (d) Where an appointed umpire or third arbitrator refuses to act, or is incapable of acting, or dies, and the submission does not show that it was intended that the vacancy should not be supplied and the parties or arbitrators do not supply the vacancy;

Q. XXV,  
r. 2.

any party may serve the other parties or the arbitrators, as the case may be, with a written notice to appoint an arbitrator, umpire, or third arbitrator.

If the appointment is not made within seven clear days after the service of the notice, the Court or a Judge may, on application by the party who gave the notice, appoint an arbitrator, umpire, or third arbitrator, who shall have the like powers to act in the reference, and make an award as if he had been appointed by consent of all parties. 52 & 53 Vict. c. 49. s. 5, (Imp.).

6. Where a submission provides that the reference shall be to two arbitrators, one to be appointed by each party, then unless the submission expresses a contrary intention,—

<sup>792</sup>  
Power to  
parties in  
certain cases  
to supply  
vacancy.

- (a) If either of the appointed arbitrators refuses to act or is incapable of acting, or dies, the party who appointed him may appoint a new arbitrator in his place;
- (b) If, on such a reference, one party fails to appoint an arbitrator, either originally or by way of substitution as aforesaid, for seven clear days after the other party, having appointed his arbitrator, has served the party making default with notice to make the appointment, the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference, and his award shall be binding on both parties as if he had been appointed by consent. Provided that the Court or a Judge may set aside any appointment made in pursuance of this rule. 52 & 53 Vict. c. 49, s. 6, (Imp.).

**O. LXIV,  
FR. 7-10.**

793

Powers of  
arbitrators.

**7.** The arbitrators or umpire acting under a submission shall, unless the submission expresses a contrary intention, have power —

- (a) to administer oaths to or to take the affirmation of the parties and witnesses appearing; and
- (b) to state an award as to the whole or part thereof in the form of a special case for the opinion of the Court of Appeal or a Judge; and
- (c) to correct in an award any clerical mistake or error arising from any accidental slip or omission. 52 & 53 Vict. c. 49, s. 7, (Imp.), *am.*

794

Witnesses  
may be sum-  
moned by  
subpoena.

**8.—(1)** Any party to a submission may issue a writ of *subpoena ad testificandum*, or a writ of *subpoena duces tecum*, but no person shall be compelled under any such writ to produce any document which he could not be compelled to produce on the trial of an action. 52 & 53 Vict. c. 49, s. 8, (Imp.).

(2). Any person on whom such subpoena has been served, and who has been paid or tendered the fees for travel and attendance prescribed for witnesses in the Court, shall be liable, in case of disobedience of such subpoena, to the same punishment and penalties as if the same had been issued in an action in the Court for the attendance of witnesses at the trial.

795

Power to  
enlarge time  
for making  
an award.

**9.** The time for making an award may from time to time be enlarged by order of the Court or a Judge, whether the time for making the award has expired or not. 52 & 53 Vict. c. 49, s. 9, (Imp.).

796

Power to  
remit award.

**10.—(1).** In all cases of reference to arbitration the Court or a Judge may from time to time remit the matters referred, or any of them, to the reconsideration of the arbitrators or umpire.

(2). Where an award is remitted, the arbitrators or umpire shall, unless the order otherwise directs, make their award within three months after the date of the order. 52 & 53 Vict. c. 49, s. 10, (Imp.).

**11.—(1).** Where an arbitrator or umpire has misconducted himself the Court or Judge may remove him. **G. LXIV,**  
**rr. 11–14.**

797  
Power to set  
aside award.

(2). Where an arbitrator or umpire has misconducted himself, or an arbitration or award has been improperly procured, the Court or Judge may set the award aside. 52 & 53 Vict. c. 49, s. 11, (Imp.).

**12.** An award on a submission may, by leave of the Court or a Judge, be enforced in the same manner as a judgment or order to the same effect. 52 & 53 Vict. c. 49, s. 12, (Imp.). 798  
Enforcement  
of award.

**13.—(1)** Subject to these Rules and to any right to have particular cases tried by a jury, the Court or a Judge may refer any question arising in any cause or matter (other than a criminal proceeding by the Crown) for inquiry or report to any official or special referee. 799  
Reference for  
inquiry or  
report.

(2) The report of the referee may be adopted wholly or partially by the Court or a Judge and if so adopted may be enforced as a judgment or order to the same effect. 52 & 53 Vict. c. 49, s. 13, (Imp.), *am.*

**14.** In any cause or matter (other than a criminal proceeding by the Crown),— 800  
Reference for  
trial.

(a) If all the parties interested who are not under disability consent; or,

(b) If the cause or matter requires any prolonged examination of documents or any scientific or local investigation which cannot in the opinion of the Court or a Judge conveniently be made before a jury or conducted by the Court; or,

(c) If the question in dispute consists wholly or in part of matters of account;

the Court or a Judge may at any time order the whole cause or matter or any question or issue of fact arising therein, to be tried before a referee or arbitrator respectively agreed on by the parties, or before an official referee or officer of the Court. 52 & 53 Vict. c. 49, s. 14, (Imp.).

**G. LXIV,  
rr. 15-20.**  
901  
Powers and  
remuneration  
of referee and  
arbitrator.

**15.—(1)** In all cases of reference to an official or special referee or arbitrator under an order of the Court or a Judge in any cause or matter, the official or special referee or arbitrator shall be deemed to be an officer of the Court, and shall have such authority, and shall conduct the reference in such manner, as may be prescribed by these Rules and subject thereto as the Court or a Judge may direct.

(2) The report or award of any official or special referee or arbitrator on any such reference shall, unless set aside by the Court or a Judge, be equivalent to the verdict of a jury.

(3) The remuneration to be paid to any referee or arbitrator to whom any matter is referred under order of the Court or a Judge shall be determined by the Court or a Judge. 52 & 53 Vict. c. 49, s. 15, (Imp.), *am.*

802  
Court to have  
powers as in  
references by  
consent.

**16.** The Court or a Judge shall, as to references under order of the Court or a Judge, have all the powers which are by this order conferred on the Court or a Judge as to references by consent out of Court. 52 & 53 Vict. c. 49, s. 16, (Imp.).

803  
Court of  
Appeal to have  
powers of  
Court.

**17.** The Court of Appeal shall have all the powers conferred by this order on the Court or a Judge thereof under the provisions relating to references under order of the Court. 52 & 53 Vict. c. 49, s. 17, (Imp.).

804  
Bringing up  
witness who is  
a prisoner.

**18.** The Court or a Judge may order that a writ of *habeas corpus ad testificandum* shall issue to bring up a prisoner for examination before an official or special referee, or before any arbitrator or umpire. 52 & 53 Vict. c. 49, s. 18 (2), (Imp.).

805  
Statement of  
special case  
pending  
arbitration.

**19.** Any referee, arbitrator, or umpire may at any stage of the proceedings under a reference, and shall, if so directed by the Court or a Judge, state in the form of a special case for the opinion of the Court, or the Court of Appeal, any question of law arising in the course of the reference. 52 & 53 Vict. c. 49, s. 19, (Imp.), *am.*

806  
Costs.

**20.** Any order made under this order may be made on such terms as to costs, or otherwise, as the authority making the order thinks just. 52 & 53 Vict. c. 49, s. 20, (Imp.).

**21.** Any person who wilfully and corruptly gives false evidence before any referee, arbitrator, or umpire shall be guilty of perjury, as if the evidence had been given in open Court and may be dealt with, prosecuted, and punished accordingly. 52 & 53 Vict. c. 49, s. 22, (Imp.).

O. LXIV,  
rr. 21-22.

<sup>807</sup>  
Penalty for  
perjury.

**22.** This Order shall, except as in this Order expressly mentioned, apply to any arbitration to which His Majesty the King is a party, but nothing in this order shall empower the Court or a Judge to order any proceedings to which His Majesty is a party, or any question or issue in any such proceedings, to be tried before any referee or arbitrator, without the consent of His Majesty, as the case may be, or shall affect the law as to costs payable by the Crown. 52 & 53 Vict. c. 49, s. 23, (Imp.).

<sup>808</sup>  
Crown to be  
bound.

**23.** This order shall apply to every arbitration under any Act passed before or after the commencement of these Rules as if the arbitration were pursuant to a submission, except in so far as this order is inconsistent with the Act regulating the arbitration or with any rules or procedure authorized or recognized by that Act. 52 & 53 Vict. c. 49, s. 24, (Imp.).

<sup>809</sup>  
Application of  
order to  
references  
under statu-  
tory powers.

**24.** This order shall not affect any arbitration pending at the commencement of these Rules, but shall apply to any arbitration commenced after the commencement of these Rules under any agreement or order made before the commencement of these Rules. 52 & 53 Vict. c. 49, s. 25, (Imp.).

<sup>810</sup>  
Pending  
arbitrations.

**25.** In this order, unless the contrary intention appears, "Submission" means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not. 52 & 53 Vict. c. 49, s. 27, (Imp.).

<sup>811</sup>  
Meaning of  
"Submission."

## ORDER LXV.

O. LXV,  
r. 1.

### BAILABLE PROCEEDINGS.

**1.** In case any person is to be arrested and held to bail in an action, the action shall be commenced by and the process shall be a writ of capias according to the Form No. 6, in Appendix A., Part I. The writ shall be indorsed with a statement of the nature of the claim made, or of the relief or remedy required in the action in the same way as a writ of summons is required to be indorsed, and in all other respects the

<sup>812</sup>  
Writ of capias.

**O. LXV.**  
**rr. 2-7.**  
[See O. 3, r. 3,  
*ante*].

Rules of these Orders relating to writs of summons shall apply where not inconsistent with this Order to writs of *capias*. C. S. 1903, c. 111, s. 58, *am*.

**813**  
Direction of writ.

**2.** Such writ may be directed to the sheriff of any county in the Province, and shall, except in the case of concurrent writs, bear date on the day on which it issues, and shall be tested in the same manner as a writ of summons, and shall also be indorsed with the amount for which the defendant is to be held to bail, stating whether it is by affidavit or Judge's order. C. S. 1903, c. 111, s. 59, *am*.

Date and teste.

Indorsement.

**814**  
Duration of writ.

**3.** No writ of *capias* shall be in force for more than two months from the day of the date thereof, inclusive; but every such writ may be continued by *alias* or *pluries*, as the case may require, if any defendant therein named may not have been arrested thereon. C. S. 1903, c. 111, s. 60.

**815**  
Concurrent writs.

**4.** Concurrent writs of *capias* may be issued from time to time in like manner and form as the original writ in the action, and shall only be in force for the same period as such original writ, and no longer. C. S. 1903, c. 111, s. 61.

**816**  
Notice on copy.

**5.** Upon each copy of a writ of *capias* there shall be subscribed a notice to the defendant according to the Form No. 7, in Appendix A., Part I. C. S. 1903, c. 111, s. 63.

**817**  
Delivery of writ to Sheriff.

**6.** Every writ of *capias*, and so many copies thereof as there are persons intended to be arrested thereon, or served therewith, together with every memorandum or notice subscribed thereto, and all indorsements thereon, shall be delivered to the sheriff or other officer to whom such writ is directed, or who has the execution thereof; and the plaintiff, or his solicitor, may, by writing, order such sheriff or officer to arrest one or more of the defendants therein named, and to serve a copy thereof on one or more of the others, which order shall be duly obeyed by such sheriff or officer, and such service shall be of the same force and effect as the service of a writ of summons. C. S. 1903, c. 111, s. 63.

**818**  
Execution of writ.

**7.** Such sheriff or officer shall execute the writ of *capias* without unnecessary delay, and shall, upon or immediately after the execution of such writ, cause one copy thereof, with the memorandum and indorsement, to be delivered to each

person upon whom he executes the same, whether by service or arrest, and shall immediately thereafter indorse his return on such writ, with the true day of the execution thereof, and return the same to the plaintiff's solicitor, with an affidavit of service, in case any of the defendants named in such writ may have been served with a copy thereof. C. S. 1903, c. 111, s. 64.

**O. LXV.  
rr. 8-10.**

8. In all actions wherein the writ shall not be so as aforesaid indorsed for bail, the defendant shall not be arrested, but shall be served with a copy of the process within the jurisdiction of the Court, in the same manner as a writ of summons, and such service shall be of the same force and effect as the service of a writ of summons. C. S. 1903, c. 111, s. 65.

**819  
No arrest  
where writ  
not indorsed  
for bail.**

9. Where after the commencement of an action by writ of summons, a defendant is to be arrested, the writ of *capias* shall be in the Form No. 8, in Appendix A., Part I., and so many copies of such writ, with every memorandum or notice subscribed thereto or indorsed thereon as there may be persons intended to be arrested thereon, shall be delivered with such writ to the sheriff or other officer who may have the execution thereof, and who shall, upon or immediately after the execution thereof, cause one such copy to be delivered to every person upon whom such writ shall be executed, and shall immediately thereafter indorse thereupon the time, day and manner of the execution thereof, and the proceedings in any such action shall be carried on to judgment, without regard to the issuing of such *capias*, or to any proceedings arising from or dependent thereon, and on signing or entering judgment, the plaintiff shall be entitled to tax the costs of such writ or writs of *capias* and the proceedings thereon, in like manner as if the action had been commenced by *capias*, together with the other costs incurred and taxable to the cause. C. S. 1903, c. 111, s. 66.

**820  
Arrest after  
commence-  
ment of action.**

10. A defendant who shall have been held to bail upon any *mesne* process, may be rendered in discharge of his bail to the common gaol of any county in which he may be, and the render to such county gaol shall be effected in manner following, that is to say:—The defendant or his bail, or one of them, shall, for the purpose of such render, obtain an order as hereinafter mentioned, and shall lodge such order with the gaoler of such gaol to which the render may be made; and a notice in writing of the lodgment of such order, and of the

**821  
Render in  
discharge of  
bail.**



**G. LXV.  
rr. II—II.**

Order for  
render.

defendant being actually in custody of such gaoler by virtue of such order, signed by the defendant or the bail, or either of them, shall be delivered to the plaintiff's solicitor; and the sheriff of such county shall, on such render so perfected, be duly charged with the custody of such defendant, and the said bail shall be thereupon exonerated from liability as such. The order for render may be made by any Judge of the Supreme Court of Judicature or of any County Court, or by a commissioner for taking bail for the county in which the render is to be made. C. S. 1903, c. 111, s. 67.

<sup>822</sup>  
Render in  
discharge of  
bail of defend-  
ant in custody.

**11.** A defendant who shall hereafter be in the custody of any sheriff by virtue of any legal process, may be rendered in discharge of his bail in any action depending in the Court, in the manner hereinbefore provided for a render in discharge of bail; and such sheriff shall on such render be duly charged with the custody of such defendant, and the said bail be thereupon wholly exonerated from liability as such. C. S. 1903, c. 111, s. 68.

<sup>823</sup>  
Putting in and  
perfecting of  
special bail.

**12.** In all actions in the Court special bail may be put in and perfected, according to the established practice and these Rules, and after special bail has been so put in the plaintiff may proceed in like manner as if the action had been commenced by writ of summons, and the defendant had appeared thereto. C. S. 1903, c. 111, s. 69.

<sup>824</sup>  
Time for  
putting in  
special bail.

**13.** Special bail shall be put in within 20 days after the arrest, inclusive of such day.

<sup>825</sup>  
Special bail  
before com-  
missioner.

**14.** In all cases where bail is put in before a commissioner, the bail-piece, together with the affidavit of the due taking thereof, shall be forthwith transmitted by the solicitor who puts in the bail to any one of the Judges of the Court; and the notice of bail, in such cases, shall specify the Judge to whom the bail-piece has been so transmitted, as well as the commissioner before whom the bail was put in, and the names and additions of the bail. R. 1, S. C. H. T. 1832.

<sup>826</sup>  
Exception to  
bail.

**15.** A plaintiff shall be allowed fifteen days, after service of the notice of bail, to except against such bail; and such exception shall be entered with the Judge before whom bail

was put in, or to whom the bail-piece has been transmitted, <sup>827</sup> C. LXV.  
as the case may be. R. 2, S. C. H. T. 1832, *am.* rr. 18-22.

16. A defendant shall be allowed fifteen days, after service of notice of exception, to procure his bail to justify, <sup>827</sup> Time for justification of bail.  
or to add other bail, who shall justify within the said fifteen days, unless in either case, upon application made before the said fifteen days expire, the Court or a Judge shall see fit to extend the time. R. 3, S. C. H. T. 1832, *am.*

17. Bail shall justify in open Court or before the Judge with whom the exception is entered, notice of justifying being first duly given; and in all cases, when the bail reside more than ten miles from the place where they are to justify, they may justify by affidavit without personal attendance. <sup>828</sup> Mode of justification.  
R. 4, S. C. H. T. 1832, *am.*

18. Bail must be housekeepers or freeholders; and in cases where the sum sworn to does not exceed twelve hundred dollars, must be worth double the sum sworn to; and in cases above twelve hundred dollars, must be worth twelve hundred dollars more than the sum sworn to, over and above their just debts and every other sum for which they are bail. <sup>829</sup> Qualification of bail.  
R. 5, S. C. H. T. 1832.

19. The affidavit of justification shall be according to the following form,— <sup>830</sup> Affidavit of justification.

In the Supreme Court of Judicature.

Between, &c.

A. B. and C. D., bail for the defendant in this cause, severally make oath and say, and first this deponent, A. B., for himself saith, that he is a housekeeper (or freeholder, as the case may be), residing at (describing particularly the place of residence); that he is possessed of property to the amount of \$ (double the amount of the sum sworn to, if under \$1,200, and if above \$1,200, the amount of the sum sworn to, and \$1,200 added thereto), over and above all his just debts (if bail in any other action add), and every other sum for which he is now bail (if not bail in any other action add), that

9. LXV.  
rr. 20-24.

he is not bail for any defendant except in this action; that this deponent's property to the amount of the said sum of \$ (and if bail in any other action, "and of all other sums for which he is now bail as aforesaid") consists of real property of the value of \$ , and of personal property of the value of \$ , (as the case may be); and this deponent, C. D., for himself saith (as before).

Sworn, &c.

R. 6, S. C. H. T. 1832.

831  
Costs of  
justification.

20. If the notice of bail shall be accompanied by such an affidavit of justification, and the plaintiff afterwards except to such bail, he shall, if such bail are allowed, pay the costs of justification; and, if such bail are rejected, the defendant shall pay the costs of opposition, unless the Court or a Judge shall otherwise order. R. 7, S. C. H. T. 1832.

832  
When bail  
deemed per-  
fected where  
exception.

21. In cases of exception, when bail have duly justified and been allowed, and an order therefor made by a Judge, and a copy of such order has been served on the plaintiff's solicitor, the bail shall be deemed perfected; and the solicitor who puts in the bail shall forthwith obtain the bail-piece from the Judge with whom it lies, and file the same with the proper officer. R. 8, S. C. H. T. 1832, *am*.

833  
When bail  
deemed per-  
fected where  
no exception.

22. If the plaintiff does not except against the bail, within fifteen days after service of notice of bail, the bail shall, in like manner, be deemed perfected; and the solicitor who puts in the bail shall forthwith, after the expiration of the said fifteen days, obtain the bail-piece from the Judge, and file the same with the proper officer. R. 9, S. C. H. T. 1832.

834  
*Exoneretur.*

23. In cases of render of bail the proper officer, upon production of a certificate of the sheriff, to whose custody the defendant has been committed, that such defendant is in his custody, together with an affidavit of the service of notice of render upon the plaintiff's solicitor, shall indorse upon the bail-piece an *exoneretur*, in the words following: "The bail within named are exonerated", and shall set down the day of the month and year of his so doing, and sign his name thereto; and such certificate and affidavit shall thereupon be filed with the bail-piece. R. 10, S. C. H. T. 1832.

835  
Neglect to file  
bail-piece.

24. Any solicitor who shall neglect to transmit or to file the bail-piece, as the case may be, according to the foregoing

rules, shall be deemed to be in contempt of the Court for disobedience of its rules. R. 13, S. C. H. T. 1832. O. LXV,  
rr. 25-26.

25. It shall be deemed irregular to put in bail before a commissioner in any parish or city in the Province in which one or more of the Judges of the Court may reside, unless at times when such Judge or Judges may be absent from their place of residence; and no Judge shall receive any bail-piece, transmitted to him, in which the bail may have been entered contrary to this rule. R. 1, S. C. M. T. 1834. 836  
When bail  
may be put  
in before com-  
missioner.

26. In case of render after bail has been put in and before judgment, or within six months after judgment, a defendant in custody may put in special bail. In any action brought upon a bail bond, or against bail to the action, the Court or a Judge may grant relief upon terms as has heretofore been the practice. C. S. 1903, c. 111, s. 70. 837  
Special bail  
after render.

27. If the plaintiff or his solicitor omit to insert in or indorse on any writ of *capias* or copy thereof, any of the matters required by this or any other Order to be inserted therein or indorsed thereon, such writ or copy shall not on that account be held void, but it may be set aside as irregular, or be amended, upon application made to the Court or a Judge, and such amendment may be made upon any application to set aside the writ upon such terms as to the Court or Judge seems fit. C. S. 1903, c. 111, s. 71, *am.* See O. 28, r. 1, *ante*, and O. 75, *post*. 838  
Effect of  
omission in  
writ or copy.

28. Where a defendant taken or detained in custody and imprisoned for want of bail for his appearance thereto, does not appear and deliver a defence within the time allowed for that purpose, unless the plaintiff shall proceed to obtain judgment by default as soon as by the rules and practice of the Court he may do so, the prisoner shall be discharged out of custody by writ of *supersedeas*, unless good cause is shown to the contrary. 839  
Supersedeas  
where delay  
by plaintiff in  
prosecuting  
action.

29. Where such defendant appears and delivers a defence, unless the plaintiff proceeds to the trial of the action or to obtain judgment as soon as by the rules and the practice of 840  
Supersedeas  
where delay  
by plaintiff  
where defend-  
ant appears.

**§. LXV.  
r. 30.**

the Court he may do so, the prisoner shall be discharged out of custody by writ of supersedeas, unless good cause is shown to the contrary. See R. 7, S. C. H. T. 1839.

<sup>841</sup>  
Filing of  
affidavit to  
hold to bail.

**30.** Affidavits to hold to bail shall be filed in the office of the proper officer within five days after the arrest of the defendant. R. 2, S. C. H. T. 1810, *am.*

**§. LXVI,  
rr. 1, 2.**

## ORDER LXVI

### MISNOMER, ETC.

<sup>842</sup>  
One Christian  
name suffi-  
cient design-  
ation of  
party.

**1.** It shall not be necessary in any process, pleading, affidavit or other proceeding whatsoever, to designate any of the parties or other person whose name may be introduced into any such proceeding, by any other than one Christian or first name, being a name commonly used by such person himself, or by which he may generally have been known or called, and initial letters, or usual contractions or abbreviations for any other Christian or first name may be inserted where such person may have more than one; and no process, pleading, affidavit or other proceeding shall be vacated, annulled, set aside or otherwise affected or treated as nugatory, defective or irregular, by reason of the insertion of initial letters, or other usual contractions or abbreviations of Christian or first names, where one Christian or first name commonly used by the person, or by which he may be generally called or known, is set out at length; provided always, that nothing herein contained shall extend to the insertion of names in the recital or setting forth of any paper where it is necessary or it is purported to recite or set out such deed or paper *in haec verba*; provided, also, that in all actions upon bills of exchange or promissory notes, or other written instruments, any of the parties to which are designated by the initial letter or letters, or some contraction of the Christian or first name or names, it shall be sufficient in every affidavit to hold to bail, and in the process and statement of claim to designate such persons by the same initial letter or letters, or contraction of the Christian or first name or names, instead of stating the Christian or first name or names in full. C. S. 1903, c. 111, s. 226.

Name in  
recited  
document.

Use of initials  
in actions on  
written  
instruments.

<sup>843</sup>  
Use of custom-  
ary name.

**2.** No objection shall be allowed to any process or proceeding for want of or mistake in any Christian name or

initials thereof, if the party shall be described by the name by which he is usually called or known, or by which he is accustomed to call himself. C. S. 1903, c. 112, s. 29, *am.*

ORDER LXVII.

O. LXVII,  
PT. 1-4.

APPEALS.

1. All appeals to the Court of Appeal shall except where otherwise provided be by notice of motion as in the case of a motion for a new trial. The appellant may by the notice of motion appeal from the whole or any part of any judgment or order, and the notice of motion shall state whether the whole or part only of such judgment or order is complained of, and in the latter case shall specify such part. O.58, r. 1, (E), *am.*

<sup>844</sup>  
Appeal to be  
by notice of  
motion.  
[See O. 38, r. 2,  
*ante*].

2. The notice of appeal shall be served upon all parties directly affected by the appeal, and it shall not be necessary to serve parties not so affected; but the Court of Appeal may direct notice of the appeal to be served on all or any parties to the action or other proceeding, or upon any person not a party, and in the meantime may postpone or adjourn the hearing of the appeal upon such terms as may be just, and may give such judgment and make such order as might have been given or made if the persons served with such notice had been originally parties. Any notice of appeal may be amended at any time as the Court of Appeal may think fit. O. 58, r. 2, (E).

<sup>845</sup>  
Service of  
notice of  
appeal.  
[Cf. R. 799, (O)].

Amendment  
of notice.

3. Notice of appeal from any judgment whether final or interlocutory or from a final order shall be served within twenty days after the date of the judgment or order, and notice of appeal from any interlocutory order or from a decision or order made at Chambers shall be served within four days from the date of such order or decision, but the Court or a Judge may enlarge and extend the time for giving such notice in any of said cases either before or after the expiration thereof. Vacation time shall not be reckoned in the computation of the time for serving the notice of appeal.

<sup>846</sup>  
When notice  
to be served.

4. The Court of Appeal shall have all the powers and duties as to amendment and otherwise provided by these Rules, together with full discretionary power to receive further evidence upon questions of fact, such evidence to be either by oral examination in Court, by affidavit, or by deposition

<sup>847</sup>  
Powers of  
Court of  
Appeal to  
amend, etc.  
[Cf. R. 498,  
817, (O)].

**9. LXVII.**  
**rr. 5—7.**

Power as to  
pronouncing  
judgment in  
case.

taken before an examiner or commissioner. Such further evidence may be given without special leave upon interlocutory applications, or in any case as to matters which have occurred after the date of the decision from which the appeal is brought. Upon appeals from a judgment after trial or hearing of any cause or matter upon the merits, such further evidence (save as to matters subsequent as aforesaid) shall be admitted on special grounds only, and not without special leave of the Court. The Court of Appeal shall have power to draw inferences of fact and to give any judgment and make any order which ought to have been made, and to make such further or other order as the case may require. The powers aforesaid may be exercised by the said Court, notwithstanding that the notice of appeal may be that part only of the decision may be reversed or varied, and such powers may also be exercised in favor of all or any of the respondents or parties, although such respondents or parties may not have appealed from or complained of the decision. The Court of Appeal shall have power to make such order as to the whole or any part of the costs of the appeal as may be just. O. 58, r. 4, (E), *am.*

818  
Power to order  
new trial.  
[Cf. R. 786, (O)].

**5.** If upon the hearing of an appeal, it shall appear to the Court of Appeal that a new trial ought to be had, it shall be lawful for the said Court of Appeal, if it shall think fit, to order that the verdict and judgment shall be set aside, and that a new trial shall be had. O. 58, r. 5, (E).

849  
Cross appeal  
unnecessary.  
Proceedings  
in lieu of.  
[Cf. R. 813, (O)].

**6.** It shall not, under any circumstances, be necessary for a respondent to give notice of motion by way of cross appeal, but if a respondent intends, upon the hearing of the appeal, to contend that the decision of the Court below should be varied, he shall within the time specified in the next Rule, or such time as may be prescribed by special order, give notice of such intention to any parties who may be affected by such contention. The omission to give notice shall not diminish the powers conferred by the Act upon the Court of Appeal, but may, in the discretion of the Court, be ground for an adjournment of the appeal, or for a special order as to costs. O. 58, r. 6, (E).

850  
Length of  
notice by  
respondent.

**7.** Subject to any special order which may be made, notice by a respondent under the last preceding Rule shall in the

case of any appeal from a final judgment be an eight days' notice, and in the case of an appeal from an interlocutory order a four days' notice. O. 58, r. 7, (E), *am.*

**O. LXVII,  
rr. 8-11.**

8. The party appealing from a judgment or order shall file with the Registrar six copies of the notice of appeal for the use of the Court on or before the first day of the sittings of the Court at which the appeal is to be heard; provided always, that the Court may for good cause shown enlarge the time for the filing of such notice. On the filing of such notices the Registrar shall set down the appeal by entering the same in the proper list of appeals, and it shall come on to be heard according to its order in such list, unless the Court of Appeal or a Judge thereof shall otherwise direct. A notice of appeal on an appeal from a decision or order of a Judge at Chambers or from an interlocutory order need not be printed.

<sup>851</sup>  
Copies of  
notice of  
appeal for use  
of Court.

Setting down  
appeal.

Notice of  
appeal from  
order at  
Chambers  
need not be  
printed.

9. Where an *ex parte* application has been refused by the Court or Judge below, an application for a similar purpose may be made to the Court of Appeal *ex parte* within eight days from the date of such refusal, or within such enlarged time as a Judge of the Court below or of the Court of Appeal may allow. O. 58, r. 10, (E), *am.*

<sup>852</sup>  
Appeal from  
refusal of *ex  
parte* applica-  
tion.

10. When any question of fact is involved in an appeal, the evidence taken in the Court below bearing on such question shall, subject to any special order, be brought before the Court of Appeal as follows:

<sup>853</sup>  
Evidence on  
appeal.

- (a) As to any evidence taken by affidavit, by the production of typewritten or printed copies of such affidavits;
- (b) As to any evidence given orally, by the production of a copy of the Judge's notes, or a copy of the official stenographer's report of the evidence filed by him with the Registrar, or other certified copy, or such other materials as the Court may deem expedient. O. 58, r. 11, (E), *am.*

11. At the time of serving the notice of appeal, or within five days thereafter, or within such further time as the Court of Appeal or a Judge thereof may allow, the appellant shall

<sup>854</sup>  
Printed case  
on appeal.



**C. LXVII.  
rr. 12-14.**

serve the respondent with a three clear days' notice of application to such Court or Judge to settle and order which part, if any, of the evidence, pleadings, judgment and other proceedings shall be printed for the use of the Court of Appeal. If the same or part thereof as settled by the Court or Judge is ordered to be printed it shall form the case on appeal. The Court on the hearing may refer or allow either party to refer to any part of the evidence, pleadings, exhibits and proceedings not included in the printed case. The case on appeal shall be printed by the appellant, and he shall file eight copies thereof with the Registrar, for the use of the Judges and the officers of the Court, before the first day of the sittings of the Court at which the appeal is to be heard, and seven clear days before said day he shall deliver three copies of the printed case to the opposite party or to his solicitor or agent.

**855**  
Documents,  
etc., in possession of opposite party.

**12.** The party whose duty it is to have the case printed shall be furnished by the opposite party with copies of all exhibits and documents in the possession or control of the latter, which are ordered to be printed.

**856**  
When case on appeal not to be printed.

**13.** Where the motion is for a new trial or to set aside a verdict, finding or judgment, where the trial has been in the Trial Division of the Court, no part of the case shall be printed on appeal unless by order of the Court of Appeal or a Judge thereof, on the application of either the appellant or respondent made within five clear days after service of the notice of motion on the opposite party on a three clear days' notice. If no order is made for the printing of the case, the appellant shall file with the Registrar before the first day of the sittings of the Court at which the motion is to be heard, four copies of the pleadings or other documents showing the nature of the case; four copies of the judgment of the Judge or Court below, and four copies of the Judge's notes at the trial, where the evidence and proceedings have not been reported by an official stenographer. On the request in writing of the appellant to the Judge he shall file his notes or a certified copy thereof with the Registrar not later than five days thereafter.

**857**  
Printing of special case.

**14.** Special cases referred to the Court of Appeal shall be printed at the joint expense of both parties, and the cost thereof shall be part of the costs in the cause or matter where costs are ordered.

**15.** On an appeal from the Court of Divorce and Matrimonial Causes or from any Probate Court, the Court of Appeal or any Judge thereof may order the whole or any part of the pleadings, evidence, judgment or other proceedings to be printed, and six printed copies thereof to be filed with the Registrar on or before the hearing of the appeal for the use of the Court of Appeal. R. 3, S. C. T. T. 1868, *am.*

**O. LXVIII.**  
**rr. 15-16.**  
**858**  
Divorce and  
Probate  
appeals.

**16.** Evidence and documents ordered to be printed shall be printed in demi-quarto form, on paper of good quality, and on the left-hand pages only of the book, with small pica, leaded, and the size of each page shall be eleven inches in length by eight and one-half inches in width throughout. There shall be an index at the beginning of the book, arranged in the same order in which the contents of the book are printed, and the correspondence and other exhibits shall be printed in the order of their respective dates. The index shall refer to:

**859**  
Form of  
printed case  
on appeal.

- (a.) Each pleading, rule or order, and give its date;
- (b.) The evidence of each witness, and give the name of each;
- (c.) Each exhibit, or other document, with its description, date and mark of identification.

**17.** Every appeal unless an appeal from a decision or order at Chambers or an interlocutory order, and every motion for a new trial or to set aside a verdict, finding or judgment, shall be set down to be heard for, at the latest, the first day of the first sittings of the Court of Appeal which commences after the expiration of eight weeks from the judgment or order complained of, unless otherwise ordered by the Court of Appeal or a Judge thereof. An appeal from a decision or order at Chambers or from an interlocutory order shall be set down within twenty days after such decision or order or if the Court shall not be sitting within such twenty days, then on the first day on which the Court may be sitting after the expiration of such twenty days.

**860**  
When appeals  
to be set down.

[See O. 61, r. 16,  
*ante*.]

**18.** No interlocutory order or rule from which there has been no appeal shall operate so as to bar or prejudice the Court of Appeal from giving such decision upon the appeal as may be just. O. 58, r. 14, (E).

**861**  
Interlocutory  
order not to  
prejudice  
appeal.

**O. LXVII.  
rr. 19-24.**

<sup>862</sup>  
Stay of pro-  
ceedings on  
appeal.  
[Cf. R. 827, (O)].

**19.** An appeal shall not operate as a stay of execution or of proceedings under the decision appealed from, except so far as the Court or Judge appealed from, or the Court of Appeal may order; and no intermediate act or proceeding shall be invalidated, except so far as the Court appealed from may direct. O. 58, r. 16, (E).

<sup>863</sup>  
Applications  
to single  
Judge of  
Court of  
Appeal.

**20.** Every application to a Judge of the Court of Appeal shall be by motion, and the provisions of Order LX. shall apply thereto. O. 58, r. 18, (E).

<sup>864</sup>  
Interest where  
execution  
delayed by  
appeal.

**21.** Interest for such time as execution has been delayed by the appeal shall be allowed at the rate of five per cent. unless the Court or a Judge otherwise orders, and such interest shall be added to the judgment without any order for that purpose. O. 58, r. 19, (E), *am.*

<sup>865</sup>  
County Court  
appeals.

**22.** Appeals from the decisions of Judges of County Courts which at the commencement of these rules lay to the Supreme Court shall hereafter be to the Court of Appeal.

<sup>866</sup>  
County Court  
proceedings to  
be certified  
and filed with  
Registrar.

**23.** No appeal from the decision of a Judge of a County Court shall be entered on the docket unless the proceedings duly certified by the Judge have been received in the office of the Registrar seven days before the first day of the sittings of the Court at which it is intended to be entered. R. 1, S. C. M. T. 1885.

<sup>867</sup>  
Statement of  
facts, etc., on  
County Court  
appeal.

**24.** It shall be the duty of the appellant to prepare and file with the Registrar for the use of the Court before the first day of the sittings of the Court at which the appeal is to be entered, six copies of a brief statement of the material facts in the case either plainly and legibly written or printed, together with the grounds of the appeal, numbering the same consecutively, and referring to the page or pages of the proceedings to which the several grounds respectively relate, and such statement shall be framed, as near as may be, as a notice of motion for a new trial under Order XXXVIII., and the appellant on the argument of the appeal shall be confined to the grounds so stated. On the appellant filing the copies of the said statement he shall enter the appeal on the docket of the Court for the sittings then next to be held. RR. 3 & 4, S. C. M. T. 1885, *am.*

**25.** In case the appellant shall neglect to enter the appeal according to the preceding rule, or having entered it shall not argue it when reached in its order on the docket or at a time fixed by order of the Court for its hearing, the respondent may, on the case being called or upon a common motion day, move that the appeal be dismissed. R. 4, S. C. M. T. 1885, *am.*

**O. LXVII.**  
**rr. 25-29.**

<sup>868</sup>  
Failure of  
appellant in  
County Court  
appeal to enter  
appeal.

**26.** The Registrar shall, on the application of the appellant or his solicitor, deliver to him the proceedings certified by the Judge of the County Court (taking a receipt therefor) to enable him to prepare the statement required by Rule 24, and the appellant or his solicitor shall return such proceedings to the said officer before the first day of the sittings of the Court at which said appeal is to be entered. R. 5, S. C. M. T. 1885.

<sup>869</sup>  
Use of certified  
proceedings to  
prepare state-  
ment, etc., in  
County Court  
appeal.

**27.** An appeal from a County Court or a Probate Court shall not be entered on the docket of the Court of Appeal until the return of the Judge of the Court appealed from shall be on file in the office of the Registrar. R. 4, S. C. H. T. 1881.

<sup>870</sup>  
County Court  
appeal not to  
be entered  
until Judge's  
return on file.

**28.** On an appeal from a decision of a Judge of a County Court the Court of Appeal shall have power to draw all inferences of fact which might have drawn by the Court below, and to give any judgment and make any order which ought to have been made. No appeal shall succeed on the ground merely of misdirection or improper reception or rejection of evidence, unless in the opinion of the Court, substantial wrong or miscarriage has been occasioned thereby in the Court below.

<sup>871</sup>  
Powers of  
Court of  
Appeal on  
County Court  
appeal.

**29.** The Registrar shall for each sitting of the Court of Appeal prepare a paper or docket of all motions, causes or matters for hearing or argument entered with him or of which notice has been given.

<sup>872</sup>  
Docket of  
Court of  
Appeal.

## ORDER LXVIII.

**O. LXVIII.**  
**r. 1.**

## CERTIORARI.

**1.** It shall not be necessary on an application for a writ of *certiorari* to take out a rule or order *nisi*, but the Court of Appeal or any Judge to whom such application is made may

<sup>873</sup>  
Rule *nisi* or  
order in  
*certiorari*  
unnecessary.

**O. LXVIII,  
rr. 2, 2.**

in the first instance make an order absolute for the writ to issue, and the Registrar shall issue the same accordingly. If issued by order of a Judge it shall bear the same date as the order. R. 5, S. C. M. T. 1899.

<sup>874</sup>  
Issue of writ  
on Judge's  
order.

2. On production of such Order, where made by a Judge, to the Registrar he shall issue the writ in accordance therewith, and shall indorse on the writ the following memorandum: "This writ is issued by order of Mr. Justice , dated the day of A.D. ." R. 6, S. C. M. T. 1899, *am.*

<sup>875</sup>  
Writ may be  
returnable be-  
fore Court of  
Appeal or any  
Judge.

Rule or order  
with writ.

3. Any such writ whether issued by the order of the Court of Appeal or a Judge may be made returnable either to the Court of Appeal or before any Judge in Court. On granting the writ the Court or Judge shall grant a rule or order to show cause, specifying the grounds upon which the said writ issued and the time and place of its return, and directing within what time and upon whom the affidavits upon which the application is based or such parts of them as may be considered necessary, shall be served. The order when made by a Judge may be in the following form:

Form of order IN THE SUPREME COURT OF JUDICATURE.  
by Judge.

#### EX PARTE

Whereas application has this day been made to me on behalf of (name of applicant) for an order for a writ of *certiorari* to remove into this Court a certain conviction made before , on the day of , for (or other record or proceeding, as the case may be) with a view to the same being quashed (or as the case may be). And whereas, on reading the several affidavits upon which such application is based, I have thought proper to make an order for the issue of the said writ. I do therefore hereby order that on production hereof to the Registrar he do issue a writ of *certiorari* of this date, directed to , for the removal into this Court of the said conviction (as the case may be). And I further order that such writ be made returnable on Tuesday the day of next, at 11 o'clock in the morning at the Judges' Chambers in the City of Saint John, before a Judge there and then sitting in open Court (or at the next sittings of the Court of Appeal) at which time and place I do order to show cause why the said conviction should not be quashed

or such order made as may seem right. And I do further <sup>O. LXVIII,  
rr. 4, 5.</sup> order and direct that the affidavits of (with or without exhibits) on which the application is based together with this order be served on the said on or before the day of next. And let all proceedings be stayed until further order.

The said writ was granted on the following grounds, (state grounds distinctly). <sup>Grounds upon which writ granted.</sup>

Dated this day of , A. D. .

A. B.

Judge of the Supreme Court of  
Judicature, etc.

R. 7, S. C. M. T. 1899.

4. On the return of the writ cause may be shown upon <sup>876</sup> Order on return of writ. affidavits, or otherwise, and the matter may be dealt with in all respects and such order made as the Court or Judge hearing the same shall deem necessary or right. R. 8, S. C. M. T. 1899.

5. Any Judge before whom in open Court any such application may be pending, may at any time after the writ is returned, transfer the same to the Court of Appeal and direct the same to be entered on the Crown paper for argument; and thereafter such proceeding or matter shall be heard, determined and disposed of as though the writ had originally been made returnable before the Court of Appeal. <sup>877</sup> Transfer to Court of Appeal. R. 9, S. C. M. T. 1899.

## ORDER LXIX.

O. LXIX,  
rr. 1, 2.

### TIME.

1. Where by these Rules, or by any judgment or order <sup>878</sup> Meaning of "month." given or made after the commencement of the principal Act, <sup>[Cf. R. 342, (O)].</sup> time for doing any act or taking any proceeding is limited by months, and where the word "month" occurs in any document which is part of any legal procedure under these Rules, such time shall be computed by calendar months, unless otherwise expressed. O. 64, r. 1, (E). See C. S. 1903, c. 1, s. 8 (27).

2. Where any limited time less than six days from or <sup>879</sup> Exclusion of holidays. after any date or event is appointed or allowed for doing any <sup>[Cf. R. 343, (O)].</sup>

**O. LXIX,  
rr. 3-4.**

act or taking any proceeding, holidays as defined by *The Interpretation Act* shall not be reckoned in the computation of such limited time. O. 64, r. 2, (E), *am.*

<sup>880</sup>  
Time expiring  
on Sunday,  
etc.  
[Cf. R. 345, (O)].

**3.** Where the time for doing any act or taking any proceeding expires on a Sunday or other day on which the offices are closed, the act or proceeding shall, so far as regards the time of doing or taking the same, be held to be duly done or taken on the next juridical day. O. 64, r. 3, (E), *am.*

<sup>881</sup>  
Time for  
giving secur-  
ity for costs,  
when not to be  
reckoned.  
[Cf. R. 346, (O)].

**4.** The day on which an order for security for costs is served, and the time thenceforward until and including the day on which such security is given, shall not be reckoned in the computation of time allowed for taking any proceeding in the cause or matter. O. 64, r. 6, (E), *am.*

<sup>882</sup>  
Power of  
Court or Judge  
to enlarge or  
abridge time.  
[R. 353, (O)].

**5.** The Court or a Judge may enlarge or abridge the time appointed by these Rules, or fixed by any order enlarging time, for doing any act or taking any proceeding, upon such terms (if any) as the justice of the case may require, and any such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed. O. 64, r. 7, (E); C. S. 1903, c. 112, s. 109.

<sup>883</sup>  
Enlargement  
of time by  
consent.  
[R. 347, (O)].

**6.** The time for delivering, amending, or filing any pleading, answer, or other document may be enlarged by consent in writing, without application to the Court or a Judge. O. 64, r. 8, (E); C. S. 1903, c. 112, s. 110.

<sup>884</sup>  
Time for  
service of  
pleadings, etc.  
[Cf. R. 349, (O)].

**7.** Service of pleadings, notices, summonses, orders, rules, and other proceedings, shall be affected before the hour of six in the afternoon, except on Saturdays, when it shall be affected before the hour of one in the afternoon. Service affected after six in the afternoon on any week-day except Saturday shall, for the purpose of computing any period of time subsequent to such service, be deemed to have been affected on the following day. Service affected after one in the afternoon on Saturday shall for the like purpose be deemed to have been affected on the following Monday. O. 64, r. 11, (E), *am.*

<sup>885</sup>  
How days  
computed.  
[Cf. R. 344, (O)].

**8.** In any case in which any particular number of days, not expressed to be clear days, is prescribed by these Rules, the same shall be reckoned exclusively of the first day and in-

clusively of the last day, unless the last day shall happen to fall on a holiday, in which case the time shall be reckoned exclusively of that day also. O. 64, r. 12, (E), *am.*; C. S. 1903, c. 111, s. 392. O. LXIX.  
rr. 9-11.

9. In any cause or matter in which there has been no proceeding for one year from the last proceeding had, the party who desires to proceed shall give a month's notice to the other party of his intention to proceed. A summons on which no order has been made shall not, but notice of trial although countermanded shall, be deemed a proceeding within this Rule. O. 64, r. 13, (E). 886  
Length of  
notice after  
delay of one  
year.

10. An application to set aside an award may be made at any time before the last day of the sittings next after such award has been made and published to the parties. O. 64, r. 14, (E). 887  
Time for  
application to  
set aside  
award.

11. Where the time for making an award is enlarged, the enlargement shall be deemed to be for one month unless a different time is specified in the order. O. 64, r. 14a., (E). 888  
Enlarging  
time for  
award.

## ORDER LXX.

O. LXX.  
rr. 1, 2.

## COSTS.

1. Subject to the provisions of the principal Act and these Rules, the costs of and incident to all proceedings in the Supreme Court of Judicature, including the administration of estates and trusts, shall be in the discretion of the Court or Judge; provided that nothing herein contained shall deprive an executor, administrator, trustee, or mortgagee who has not unreasonably instituted or carried on or resisted any proceedings of any right to costs out of a particular estate or fund to which he would be entitled according to the rules hitherto acted upon in the Supreme Court in Equity; provided also that, where any action, cause, matter, or issue is tried with a jury, the costs shall follow the event, unless the Judge by whom such action, cause, matter, or issue is tried, or the Court, shall, for good cause, otherwise order. O. 65, r. 1, (E). 889  
Costs in  
discretion of  
Court.  
[Cf. R.S.O. 1897,  
c. 51, s. 119; R.  
1130 (1), (2), (O)].

2. When issues in fact and law are raised upon a claim or counterclaim, the costs of the several issues respectively, both in law and fact, shall, unless otherwise ordered, follow the 890  
Costs of issues  
to follow  
event.  
[R. 1130 (3),  
(O)].



**O. LXX,  
rr. 2-3.**

event. And an order giving a party costs except so far as they have been occasioned or incurred by or relate to some particular issue or part of his proceedings shall be read and construed as excluding only the amount by which the costs have been increased by such issue or proceedings; but the Court or Judge, if the whole costs of the action or other proceeding are not intended to be given to the party, may wherever practicable by the order direct taxation of the whole costs and payment of such proportion thereof, as the Court or Judge shall determine. O. 65, r. 2, (E).

**891**  
Costs where  
amount  
recovered  
within County  
Court juris-  
diction.  
[Cf. O. 65, r. 12,  
(E)].

**3.—(1)** If in any action brought in the Supreme Court of Judicature that could have been brought in a County Court, the plaintiff shall recover no greater amount than might have been recovered in a County Court, he shall be allowed costs according to the table of fees in County Courts, and no more, unless the Judge who tried the cause shall certify that there was good cause for bringing the action in the Supreme Court of Judicature. C. S. 1903, c. 111, s. 379.

Costs where  
acceptance of  
offer to suffer  
judgment by  
default for  
amount with-  
in County  
Court juris-  
diction.

(2) Where, in a suit in the Supreme Court of Judicature, the plaintiff accepts an offer to suffer judgment by default for an amount which is within the jurisdiction of a County Court, the plaintiff shall only have County Court costs, unless a Judge of the Supreme Court of Judicature shall, on hearing the parties, certify that there was, in his opinion, good cause for bringing the action in the Supreme Court of Judicature. C. S. 1903, c. 111, s. 192.

**892**  
Personal  
liability of  
solicitor to  
pay costs.

**4.** Where upon the trial of any cause or matter it appears that the same cannot conveniently proceed by reason of the solicitor for any party having neglected to attend personally, or by some proper person on his behalf, or having omitted to deliver any paper necessary for the use of the Court or Judge and which, according to the practice, ought to have been delivered, such solicitor shall personally pay to all or any of the parties such costs as the Court or Judge shall think fit to award. O. 65, r. 5, (E).

**893**  
Security for  
costs.  
[R. 1201, (O)].

**5.** In any cause or matter in which security for costs is required, the security shall be of such amount, and be given at such times, and in such manner and form, as the Court or a Judge shall direct. O. 65, r. 6, (E).

6. Security for costs may be ordered where by law or by practice a party has heretofore been entitled to obtain security for costs, and, without restricting the generality of this provision, also in the following cases:

<sup>891</sup>  
O. LXX.  
FF. 6-9.  
When security  
for costs may  
be ordered.  
[Cf. O. 85, r.  
6a., (E)].

- (a) Where the plaintiff resides out of the Province;
- (b) Where the plaintiff is ordinarily resident out of the Province, though he may be temporarily resident within the Province;

and the Court or a Judge may make such order for security for costs and staying proceedings until security is given as may seem just. R. 1198, (O), *am.*

7.—(1) Where it appears, by the writ of summons, notice, or other proceeding by which a cause or matter is commenced, or by an indorsement thereon, that the plaintiff resides out of the Province, the order may be obtained *ex parte* after appearance by the defendant applying therefor pursuant to any such writ of summons.

<sup>895</sup>  
*Ex parte* order  
for security  
for costs.

(2) The order shall require the plaintiff, within 30 days from the service of the order, to give security in \$400 for the defendant's costs of the action, and shall direct that all further proceedings be stayed in the meantime, and that in default of such security being given the action shall be dismissed with costs against the defendant obtaining the order, unless the Court or a Judge, upon special application for that purpose, otherwise orders. R. 1199, (O), *am.*

8. The Court or Judge may, by an order for security or by any subsequent order, require the security to be furnished within a time to be appointed, and may stay all further proceedings in the meantime, and, in the case of a plaintiff required to give security, may direct that in default of the security being given the action shall be dismissed as for want of prosecution, with costs, as against the defendant entitled to the security, unless the Court or a Judge, upon special application for that purpose, otherwise orders. R. 1202, (O).

<sup>896</sup>  
Time for  
giving security.

9. Where an order for security for costs provides that, in default of security being given, the cause or matter shall be dismissed with costs against a defendant, the Court or a Judge, upon default being made in giving security pursuant

<sup>897</sup>  
Dismissal of  
proceedings  
on default in  
giving security.

**O. LXX.  
r. 10-14.**

to the order, may, upon an *ex parte* application, order that the cause or matter be dismissed with costs against such defendant. R. 1203, (O).

**898  
Stay of pro-  
ceedings until  
security given.**

**10.** Where security for costs is ordered, proceedings in the action shall be stayed from the service of the order until the security is given, if given. R. 1204, (O), *am.*

**899  
To whom bond  
for security to  
be given.  
[R. 1205, (O)].**

**11.** Where a bond is given for security for costs, it shall, unless the Court or a Judge shall otherwise direct, be given to the party or person requiring the security, and not to an officer of the Court. O. 65, r. 7, (E).

**900  
Money as  
security in  
lieu of bond.**

**12. (1).** Instead of giving a bond as security for costs, a party may, without special order, pay into Court, as such security, the sum of \$500.

(2). The party paying in the money shall, when paying the same in, state the purpose for which it is paid in, and shall forthwith serve a notice upon the opposite party specifying the fact and purpose of such payment. R. 1207, (O), *am.*

**901  
Payment of  
money out of  
Court.**

**13.** Where money has been paid into Court as security for costs, it may be paid out to the party entitled thereto on the consent of the solicitors in the cause or matter, without order. R. 1211, (O), *am.*

**902  
Costs may be  
disallowed to  
or ordered to  
be paid by  
solicitor where  
delay or mis-  
conduct.**

**14.** If in any case it shall appear to the Court or a Judge that costs have been improperly or without any reasonable cause incurred, or that by reason of any undue delay in proceeding under any judgment or order, or of any misconduct or default of the solicitor, any costs properly incurred have nevertheless proved fruitless to the person incurring the same, the Court or a Judge may call on the solicitor of the person by whom such costs have been so incurred to show cause why such costs should not be disallowed as between the solicitor and his client, and also (if the circumstances of the case shall require) why the solicitor should not repay to his client any costs which the client may have been ordered to pay to any other person, and thereupon may make such order as the justice of the case may require. The Court or Judge may, if they or he think fit, refer the matter to the Registrar for inquiry and report; and direct the solicitor in the first place to show cause before such Registrar. Such notice (if any) of the proceedings or order shall be given to the client in such manner as the Court or Judge may direct. O. 65, r. 11, (E), *am.*

**15.** Where the Court or a Judge appoints one of the solicitors of the Court to be guardian *ad litem* of an infant or person of unsound mind, the Court or Judge may direct that the costs to be incurred in the performance of the duties of such office shall be borne and paid either by the parties or some one or more of the parties to the cause or matter in which such appointment is made, or out of any fund in Court in which such infant or person of unsound mind may be interested, and may give directions for the repayment or allowance of such costs as the justice and circumstances of the case may require. O. 65, r. 13, (E).

**O. LXX.  
FF. 15-20.**  
**903**  
Costs of solicitor guardian *ad litem*.

**16.** A set-off for damages or costs between parties may be allowed notwithstanding the solicitor's lien for costs in the particular cause or matter in which the set-off is sought. O. 65, r. 14, (E).

**904**  
Set-off.  
(Cf. R. 1165, (O)).

**17.** The costs occasioned by any unsuccessful claim or unsuccessful resistance to any claim to any property shall not be paid out of the estate unless the Judge shall otherwise direct. O. 65, r. 14a., (E).

**905**  
Costs out of estate.

**18.** The costs of inquiries to ascertain the person entitled to any legacy, money, or share, or otherwise incurred in relation thereto, shall be paid out of such legacy, money, or share, unless the Judge shall otherwise direct. O. 65, r. 14b., (E).

**906**  
Costs out of particular shares.

**19.** Where some of the persons entitled to a distributive share of a fund are ascertained, and difficulty or delay has occurred or is likely to occur in ascertaining the persons entitled to the other shares, the Court or a Judge may order or allow immediate payment of their shares to the persons ascertained without reserving any part of those shares to answer the subsequent costs of ascertaining the persons entitled to the other shares; and in all such cases such order may be made for ascertaining and payment of the costs incurred down to and including such payment as the Court or Judge shall think reasonable. O. 65, r. 14c., (E).

**907**  
Distribution not to be delayed by difficulties as to some shares.

**20.** Costs may be taxed on an award, notwithstanding the time for setting aside the award has not elapsed. O. 65, r. 15, (E).

**908**  
Costs on an award.  
[R. 1166, (O)].

**O. LXX.  
rr. 21-26.**

909  
Notice of  
taxation,  
[R. 1159, (O)].

**21.** Where a notice of taxation is necessary, one day's notice shall be sufficient if served with a copy of the bill of costs. O. 65, r. 16, (E), *am.*

910  
When notice  
of taxation  
unnecessary.  
[R. 1160, (O)].

**22.** Notice of taxation shall not be necessary where the defendant has not appeared in person, or by his solicitor or guardian. O. 65, r. 17, (E), *am.*

911  
Mode of  
drawing bill  
of costs.

**23.** In every bill of costs the professional charges shall be entered in a separate column from the disbursements, and every column shall be cast before the bill is brought in for taxation. O. 65, r. 19*h.*, (E).

912  
Gross sum for  
costs.  
[R. 1137, (O)].

**24.** In any case, where the Court or a Judge shall think fit to award costs to any party, the Court or Judge may by the order direct taxation of the costs of such party and payment of a proportion thereof or direct payment of a sum in lieu of taxed costs, and direct by and to whom such proportion or sum shall be paid. O. 65, r. 23, (E).

913  
Affidavit of  
mileage.

**25.** Mileage shall not be taxed or allowed for the service of any writ, paper or proceeding, without an affidavit stating the sum actually disbursed and paid for such mileage, and the name of the person to whom such payment has been made. R. 1172, (O), *part.*

914  
Affidavit of  
disburse-  
ments.

**26.—(1)** An affidavit of disbursements shall be made by the solicitor in the cause or matter or some clerk having the management thereof, or by the client.

(2) The affidavit shall set forth the sums paid to counsel, naming them, and for what services, the names of witnesses, their place of abode, the place at which they were subpoenaed, and the distance which each such witness was necessarily obliged to travel in order to attend the trial, and the sums paid by them, and shall state that all such witnesses were necessary and material for the client in the cause or matter, that they did attend, and that they did not attend as witnesses in any other cause (or otherwise, as the case may be), and the number of days which each witness was necessarily absent from home in order to attend such trial. If a solicitor attends as a witness, it shall be stated whether or not he attended at the place of trial as solicitor or witness in any other cause,

and whether or not he had any other business there. The day on which the trial took place shall be stated. R. 1173, (O). O. LXX,  
r. 27.

**27.** The following special allowances and general regulations shall apply to all proceedings and all taxations in the Supreme Court of Judicature :— 915  
Special allow-  
ances and  
general regu-  
lations.

(1) As to writs of summons requiring special indorsement, and as to special cases, pleadings, and affidavits in answer to interrogatories, and other special affidavits, and admissions under Order XXXII, Rule 4, the taxing officer may, in lieu of the allowances for instructions and preparing or drawing, and attendances, make such allowance for work, labour and expenses in or about the preparation of such documents as in his discretion he may think proper. O. 65, r. 27 (1), (E). Allowances for  
pleadings, etc.,  
in discretion  
of taxing  
officer.

(2) As to drawing any pleading or other document, the fees allowed shall include any copy made for the use of the solicitor, agent, or client, or for counsel to settle. O. 65, r. 27 (2), (E). Drawing  
pleadings.

(3) As to instructions to sue or defend, or the preparation of briefs, if the taxing officer shall on special grounds consider the fee in the table provided inadequate, he may make such further allowance as he shall in his discretion consider reasonable. O. 65, r. 27 (3), (E). Instructions  
to sue or  
defend, etc.

(4) As to affidavits, when there are several deponents to be sworn, or it is necessary for the purpose of an affidavit being sworn to go to a distance, or to employ an agent, such reasonable allowance may be made as the taxing officer in his discretion may think fit. O. 65, r. 27 (4), (E). Swearing  
affidavits.

(5) The allowances for instructions and drawing an affidavit in answer to interrogatories and other special affidavits, and attending the deponent to be sworn, include all attendances on the deponent to settle and read over. O. 65, r. 27 (5), (E). Drawing  
affidavits and  
attending  
deponent.

(6) As to delivery of pleadings, services, and notices, the fees are not to be allowed when the same solicitor is for both parties, unless it be necessary for the purpose of making an affidavit of service. O. 65, r. 27 (6), (E). Delivery of  
pleadings.

●. LXX,  
r. 27—*Con.*  
Perusals.

(7) As to perusals the fees are not to apply where the same solicitor is for both parties. O. 65, r. 27 (7), (E).

Separate  
answers or  
proceedings  
by the same  
solicitor.  
[Cf. R. 1162,  
(O)].

(8) Where the same solicitor is employed for two or more defendants, and separate pleadings are delivered or other proceedings had by or for two or more such defendants separately, the taxing officer shall consider in the taxation of such solicitor's bill of costs, either between party and party or between solicitor and client whether such separate pleadings or other proceedings were necessary or proper, and if he is of opinion that any part of the costs occasioned thereby has been unnecessarily or improperly incurred, the same shall be disallowed. O. 65, r. 27 (8), (E).

Non-attend-  
ance or  
neglect of  
parties in pro-  
ceedings in  
Chambers.

(9) As to attendances at the Judges' chambers, where by reason of the non-attendance of any party (unless it be considered expedient to proceed *ex parte*), or where by reason of the neglect of any party, in not being prepared with any proper evidence, account, or other proceeding, the attendance is adjourned without any useful progress being made, the Judge may order such an amount of costs (if any) as he shall think reasonable to be paid to the party attending by the party so absent or neglectful, or by his solicitor personally; and the party so absent or neglectful is not to be allowed any fee as against any other party, or any estate or fund in which any other party is interested. O. 65, r. 27 (13), (E).

Folio to be  
100 words.  
[Cf. R. 321, (O)].

(10) A folio is to comprise 100 words, every figure comprised in a column, or authorized to be used, being counted as one word. O. 65, r. 27 (14), (E), *am.*

Fees to  
Counsel for  
settling  
pleadings,  
affidavits,  
etc., and  
advising  
thereon.

(11) Such costs of procuring the advice of counsel on the pleadings, evidence, and proceedings in any cause or matter as the taxing officer shall in his discretion think just and reasonable, and of procuring counsel to settle such pleadings and special affidavits as the taxing officer shall in his discretion think proper to be settled by counsel, are to be allowed; but as to affidavits a separate fee is not to be allowed for each affidavit, but one fee for all the affidavits proper to be so settled, which are or ought to be filed at the same time. O. 65, r. 27 (15), (E).

Inspection of  
documents.  
[R. 1156, (O)].

(12) The costs of inspection of documents shall be in the discretion of the taxing master, but no allowance is to be made for any inspection unless it is shown to the satisfaction

of the taxing master that there were good and sufficient reasons for making such inspection. O. 65, r. 27 (17a.), (E). ●. LXX.  
r. 27—Con.

(13) The Court or Judge may, at the hearing of any cause or matter, or upon any application or proceeding in any cause or matter in Court or at Chambers, and whether the same is objected to or not, direct the costs of any indorsement on a writ of summons, pleading, summons, affidavit, evidence, notice requiring a statement of claim, notice to produce, admit, or cross-examine witnesses, account, statement, procuring discovery by interrogatories or order, applications for time, bills of costs, service of notice of motion or summons, or other proceeding, or any part thereof, which is improper, vexatious, unnecessary, or contains vexatious or unnecessary matter, or is of unnecessary length, or caused by misconduct or negligence, to be disallowed, or may direct the taxing officer to look into the same and to disallow the costs thereof, or of such part thereof as he shall find to be improper, unnecessary, vexatious, or to contain unnecessary matter, or to be of unnecessary length, or caused by misconduct or negligence; and in such case the party whose costs are so disallowed shall pay the costs occasioned thereby to the other parties; and in any case where such questions shall not have been raised before and dealt with by the Court or Judge, it shall be the duty of the taxing officer to look into the same (and, as to evidence although the same may be entered as read in any decree or order) for the purpose aforesaid, and thereupon the same consequences shall ensue as if he had been specially directed to do so. O. 65, r. 27 (20), (E). Disallowance  
of costs of  
improper,  
vexatious, or  
unnecessary  
matter in  
documents or  
proceedings.  
(Cf. R. 1164,  
(O)).

(14) In any case in which, under the last preceding regulation or any other rule of Court, or by the order or direction of a Court or Judge, or otherwise, a party entitled to receive costs is liable to pay costs to any other party, the taxing officer may tax the costs such party is so liable to pay, and may adjust the same by way of deduction or set-off, or may, if he shall think fit, delay the allowance of the costs such party is entitled to receive until he has paid or tendered the costs he is liable to pay; or such officer may allow or certify the costs to be paid, and direct payment thereof, and the same may be recovered by the party entitled thereto in the same manner as costs ordered to be paid may be recovered. O. 65, r. 27 (21), (E). Set-off of costs.  
(Cf. R. 1164,  
(O)).



**O. LXX.  
r. 27—Cont.**

Unnecessary  
appearance in  
Court or at  
Chambers.

(15) Where any party appears upon any application or proceeding in Court or at Chambers, in which he is not interested, or upon which, according to the practice of the Court, he ought not to attend, he is not to be allowed any costs of such appearance unless the Court or Judge shall expressly direct such costs to be allowed. O. 65, r. 27 (23), (E).

Costs of appli-  
cations to  
extend time.  
[Cf. R. 1132,  
(O)].

(16) The costs of applications to extend the time for taking any proceedings shall be in the discretion of the taxing officer, unless the Court or Judge shall have specially directed how the costs are to be paid or borne. The taxing officer shall not allow the costs of more than one extension of time, unless he is satisfied that such extension was necessary, and could not, with due diligence, have been avoided. The costs of a summons to extend time shall not be allowed in cases to which Rule 6 of Order LXIX. applies, unless the party taking out such summons has previously applied to the opposite party to consent, and he has not given a consent, to a sufficient extension of time, or the taxing officer shall consider there was a good reason for not making such application; and in case the taxing officer shall not allow the costs of such summons, and shall consider that the party applying ought to pay the costs of any other party occasioned thereby, he may direct such payment, or deal with such costs, in the manner provided by Regulation 14. O. 65, r. 27 (24), (E).

Attendance  
of parties on  
taxation.  
[Cf. R. 1161,  
(O)].

(17) The taxing officer shall have authority to arrange and direct what parties are to attend before him on the taxation of costs to be borne by a fund or estate, and to disallow the costs of any party whose attendance such officer shall in his discretion consider unnecessary. O. 65, r. 27 (27), (E).

Refusal or  
neglect to pro-  
cure taxation.  
[Cf. R. 1163,  
(O)].

(18) When any party entitled to costs refuses or neglects to bring in his costs for taxation, or to procure the same to be taxed, and thereby prejudices any other party, the taxing officer shall be at liberty to certify the costs of the other parties, and certify such refusal or neglect, or may allow such party refusing or neglecting a nominal or other sum for such costs, so as to prevent any other party being prejudiced by such refusal or neglect. O. 65, r. 27 (28), (E).

Fees not pro-  
vided for.

(19) As to any work and labour properly performed and not herein provided for, and in respect of which fees have

heretofore been allowed, the same or similar fees are to be allowed for such work and labour as have heretofore been allowed. O. 65, r. 27 (30), (E).

●. LXX.  
r. 27—Con.

(20) Where the plaintiff is directed to pay to the defendant the costs of the cause, the costs occasioned to a defendant by any amendment of the plaintiff's pleadings shall be deemed to be part of such defendant's costs in the cause (except as to any amendment which shall appear to have been rendered necessary by the default of such defendant); but there shall be deducted from such costs any sum which may have been paid by the plaintiff according to the course of the Court at the time of any amendment. O. 65, r. 27 (31), (E).

Costs of amendment of plaintiff's pleadings.

(21) Where upon taxation a plaintiff who has obtained a judgment with costs is not allowed the costs of any amendment of his pleadings on the ground of the same having been unnecessary, the defendant's costs occasioned by such amendment shall be taxed, and the amount thereof deducted from the costs to be paid by the defendant to the plaintiff. O. 65, r. 27 (32), (E).

Costs to defendant of amendment by plaintiff.

(22) Where an action or petition is dismissed with costs, or a motion is refused with costs, or any costs are by any general or special order directed to be paid, the taxing officer may tax such costs without any order referring the same for taxation, unless the Court or a Judge upon the application of the party alleging himself to be aggrieved prohibits the taxation of such costs. O. 65, r. 27 (33), (E).

Taxation where action dismissed with costs.

(23) Where any costs are by any judgment or order directed to be taxed and to be paid out of any money or fund in Court, the taxing officer in his certificate of taxation shall state the total amount of all such costs as taxed without any direction for that purpose in such judgment or order. O. 65, r. 27 (35), (E).

Certificate by officer where costs payable out of money in court.

(24) Where the costs of one defendant ought to be paid by another defendant, the Court may order payment to be made by the one to the other directly. R. 1140, (O).

Costs by one defendant to another.

(25) If upon any taxation it shall appear that the costs have been increased by unnecessary delay or by improper, vexatious, prolix or unnecessary proceedings, or by other mis-

Taxation of costs at gross sum.

O. LXX,  
r. 27—Con.

conduct or negligence, or that from any other cause the amount of the costs is excessive having regard to the nature of the business transacted or the interests involved or the money or value of property to which the costs relate or to the other circumstances of the case the taxing master shall allow only such an amount of costs as may be reasonable and proper and may assess the same at a gross sum, and shall (if necessary) apportion the amount among the parties if more than one. The provisions as to the review of taxation shall apply to allowances and certificates under this Rule. O. 65, r. 27 (38a.), (E).

Disallowances  
where bill  
reduced by a  
sixth.

(26) If on the taxation of a bill of costs payable out of a fund or estate (real or personal), or out of the assets of a company in liquidation, the amount of the professional charges contained in the bill is reduced by a sixth part, no costs shall be allowed to the solicitor leaving the bill for taxation for drawing and copying it, nor for attending the taxation. O. 65, r. 27 (38b.), (E).

Objections to  
taxation.  
[Cf. R. 1182,  
(O)].

(27) Any party who may be dissatisfied with the allowance or disallowance by the taxing officer, in any bill of costs taxed by him, of the whole or any part of any items, may, at any time before the certificate or allocatur is signed, or such earlier time, as may in any case be fixed by the taxing master, deliver to the other party interested therein, and carry in before the taxing officer an objection in writing to such allowance or disallowance, specifying therein by a list, in a short and concise form, the items or parts thereof objected to, and the grounds and reasons for such objections, and may thereupon apply to the taxing officer to review the taxation in respect of the same. The taxing officer may, if he shall think fit, issue, pending the consideration of such objections, a certificate of taxation or allocatur for or on account of the remainder of the bill of costs, and such further certificate or allocatur as may be necessary shall be issued by the taxing master after his decision upon such objections. O. 65, r. 27 (39), (E).

Review of  
taxation.  
[Cf. R. 1183,  
(O)].

(28) Upon such application the taxing officer shall reconsider and review his taxation upon such objections, and he may, if he shall think fit, receive further evidence in respect thereof, and, if so required by either party, he shall state either in his

certificate of taxation or allocatur, or by reference to such objection, the grounds and reasons of his decision thereon, and any special facts or circumstances relating thereto. O. 65, r. 27 (40), (E).

O. LXX,  
r. 27—Con.

(29) Any party who may be dissatisfied with the certificate or allocatur of the taxing officer, as to any item or part of an item which may have been objected to as aforesaid, may within fourteen days from the date of the certificate or allocatur, or such other time as the Court or a Judge, or taxing officer, at the time he signs his certificate or allocatur, may allow, apply to the Judge at Chambers for an order to review the taxation as to the same item or part of an item, and the Judge may thereupon make such order as the Judge may think just; but the certificate or allocatur of the taxing officer shall be final and conclusive as to all matters which shall not have been objected to in manner aforesaid. O. 65, r. 27 (41), (E).

Review of  
taxation by  
Judge.  
[Cf. R. 774, (O)].

(30) Such application shall be heard and determined by the Judge upon the evidence which shall have been brought in before the taxing officer, and no further evidence shall be received upon the hearing thereof, unless the Judge shall otherwise direct. O. 65, r. 27 (42), (E).

Evidence on  
review of  
taxation by  
Judge.  
[Cf. R. 774, (O)].

(31) No retaining fee to counsel shall be allowed on taxation as between party and party. O. 65, r. 27 (44), (E).

Retaining fee  
to Counsel.

(32) Whenever it shall happen that a Judge shall, by reason of death, resignation, or otherwise, cease to hold his office before granting any allocatur or certificate for costs to which any party may be entitled in any proceeding, any other Judge may, on application, grant such allocatur or certificate as fully and in all respects the same as such first mentioned Judge could have done if then holding office. C. S. 1903, c. 111, s. 387.

Allocatur  
where death  
or resignation  
of Judge.

(33) Subject to these Rules, costs shall be allowed and taxed according to the table of fees in Appendix B. to these Rules. C. S. 1903, c. 111, s. 388.

**O. LXXI,  
Fr. 1-7.**

# ORDER LXXI.

## WRITS, OFFICE DOCUMENTS, ETC.

<sup>916</sup>  
Issue of writs,  
etc., in blank.

**1.** The Registrar shall deliver blank writs, including originating summonses, signed and sealed, to the solicitors or attorneys of the Court, to be by them or any other solicitor or attorney filled up as occasion may require; they accounting to the said Registrar therefor, and forthwith forwarding to him præcipes for such of the said writs and summonses as they may from time to time issue. R. S. C. H. T. 1805; R. 2, S. C. H. T. 1810.

<sup>917</sup>  
Sealed copies,  
etc., receiv-  
able in  
evidence.

**2.** All copies, certificates, and other documents appearing to be sealed with the seal of the Court, shall, except where otherwise provided, be presumed to be authenticated copies or certificates or other documents issued by the Registrar, and may be received in evidence, and no signature or other formality, except the sealing with the seal of the Court, shall be required for the authentication of any such copy, certificate, or other document, except where otherwise provided. O. 61, r. 7, (E), *am.*

<sup>918</sup>  
Enrolment of  
judgment  
or order  
unnecessary.

**3.** It shall not be necessary to enrol any judgment or order, whether dated before or since the commencement of the principal Act. O. 61, r. 8, (E); C. S. 1903, c. 112, s. 127.

<sup>919</sup>  
Indexes to  
files to be kept.

**4.** Proper indexes or calendars to the files or bundles of all documents filed, shall be kept, so that the same may be conveniently referred to when required, and such indexes or calendars and documents shall, at all times during office hours, be accessible to the public on payment of the usual fee. O. 61, r. 17, (E).

<sup>920</sup>  
Entry of time  
of delivery of  
documents  
filed.

**5.** There shall also be entered in proper books kept for that purpose by the Registrar, the time of delivery of every document filed, and such books shall at all times during office hours be accessible to the public on payment of the usual fee. O. 61, r. 18, (E).

<sup>921</sup>  
Date of  
judgment,  
etc., to be  
entered.

**6.** There shall also be entered in the cause-book, the date of every judgment, order and certificate made in every cause or matter. O. 61, r. 20, (E).

<sup>922</sup>  
Date upon  
documents  
filed.

**7.** Upon every pleading or other proceeding which is filed in the Registrar's office the date of filing the same shall be printed or written. O. 61, r. 16, (E).

8. For the purpose of enabling all persons to obtain precise information as to the state of any cause or matter, and to take the means of preventing improper delay in the progress thereof, the Registrar shall at the request of any person, whether a party or not to the cause or matter inquired after, but on payment of the usual fee, give a certificate specifying therein the dates and general description of the several proceedings which have been taken in such cause or matter. O. 61, r. 24, (E).

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**○. LXXI.  
rr. 15-17.**

and subject to any condition that may be directed, which recognizance shall be for the benefit of any and all parties that may be aggrieved or injured by the breach of conditions thereof. Such recognizance may be entered into before any Judge, or before any person he may direct. C. S. 1903, c. 112, s. 296, *am.*

<sup>930</sup>  
Proceedings  
on breach of  
recognizance.

**15.** Upon breach of the condition of such recognizance being alleged by any party aggrieved or injured thereby, such party may apply by petition or otherwise to the Court or a Judge for relief, who shall, on due notice of the application, upon hearing the parties, make such order as to the payment of the sum acknowledged to be due by such recognizance, or any part of such sum as may be right, to compensate the party injured or aggrieved by such breach, and make like orders from time to time until the whole amount of said recognizance is ordered to be paid; such orders to be subject to like appeals as any other orders or judgments made by the Court or a Judge, and shall be enforced in the same manner as any other order or judgment for the payment of money is enforced. C. S. 1903, c. 112, s. 297.

<sup>931</sup>  
Change in  
office of  
Registrar not  
to invalidate  
recognizance.

**16.** All such recognizances shall be and remain valid and capable of being enforced, notwithstanding a change in the occupant of the office, or in the office of the Registrar of the Court, or that such office is vacant. C. S. 1903, c. 112, s. 298.

<sup>932</sup>  
Security by  
bond of  
company.

**17.** In lieu of, or in addition to, the recognizance mentioned in the preceding Rule 14, the security in said rule mentioned may, if authorized by the Court or Judge, be given, in whole or in part, by the bond or policy of guarantee of a duly qualified incorporated company, pursuant to the provisions of section 4 of Chapter 67 of the Consolidated Statutes, 1903. C. S. 1903, c. 112, s. 299.

**○. LXXII.  
r. 1.****ORDER LXXII.**

## NOTICES, PAPERS, ETC.

<sup>933</sup>  
Notices to be  
in writing.  
[Cf. R. 316. (O).]

**1.** All notices required by these Rules shall be in writing, unless expressly authorized by the Court or a Judge to be given orally. O. 66, r. 1, (E).

2. Every petition and other proceeding of a like nature shall be divided into numbered paragraphs, and shall state concisely such matters and facts as may be necessary to truly inform the Court.

● LXXII,  
rr. 2-5.

934  
Form of  
petition, etc.  
[Cf. R. 318, (O);  
see O. 34, r. 1,  
ante].

3. A party requiring a copy of any pleading, affidavit, exhibit, or document not directed to be served, shall make a written application for the same to the solicitor of the party by whom it has been filed, or on whose behalf it is to be used; and where the party has no solicitor, then to the party himself.

935  
Copies of  
documents to  
be demanded  
in writing.  
[R. 324, (O)].

4. Where an application is made for a copy of any pleading, affidavit, exhibit or document, it shall be delivered within forty-eight hours from the time of the demand; and any further time which may elapse before the delivery is not to be computed against the party demanding the same.

936  
Time within  
which copy  
of document  
demanded to  
be furnished.  
[R. 325, (O)].

5. A party entitled under the Rules or a special order to, and requiring copies of or extracts from, any document in possession of another party, shall pay to the party producing the document for such copy or extract as he may, by writing, require, at the rate of ten cents per folio; and if the solicitor of the party producing the document refuses or neglects to supply the copy or extract, the party requiring the same shall be at liberty to make it, and the party producing shall not be entitled to any fee in respect thereof.

937  
Copies of  
documents in  
possession of  
another party.  
[O. 65, r. 27 (18),  
(E); R. 326, (O)].

### ORDER LXXIII.

● LXXIII,  
rr. 1, 2.

#### SERVICE OF ORDERS, ETC.

1. Except in the case of an order for attachment, it shall not be necessary to the regular service of an order that the original order be shown unless sight thereof is demanded. O. 67, r. 1, (E), *am.*

938  
Production of  
original order  
on service.  
[Cf. R. 333, (O)].

2. All writs, notices, pleadings, orders, summonses, warrants, and other documents, proceedings, and written communications in respect of which personal service is not requisite, shall be sufficiently served if left within the prescribed hours, at the address for service of the person to be served as defined by Orders III. and XII., with any person resident at or belonging to such place. O. 67, r. 2, (E).

939  
Mode of  
service  
where not  
personal.



**o. LXXIII.  
rr. 3-4.**

<sup>940</sup>  
Service where  
no appearance  
or no address  
for service.  
[Cf. R. 330, (O)].

**3.** When no appearance has been entered for a party, or when a party or his solicitor, as the case may be, has omitted to give an address for service as required by Orders III. and XII., all writs, notices, pleadings, orders, summonses, warrants and other documents, proceedings, and written communications, in respect of which personal service is not requisite, may be served by filing them with the proper officer. O. 67, r. 4, (E).

<sup>941</sup>  
Manner of  
personal  
service.

**4.** Where personal service of any writ, notice, pleading, order, summons, warrant or other document, proceeding, or written communication is required by these Rules or otherwise, the service shall be effected as nearly as may be in the manner prescribed for the personal service of a writ of summons. O. 67, r. 5, (E).

<sup>942</sup>  
Service by  
mailing to  
solicitor.  
[R. 331, (O)].

**5.** Where at the time of attendance to serve any paper or document, the office of the solicitor for the party upon whom the service is sought to be made is closed, or no one is in attendance therein for receiving papers or documents served, service of the paper or document may be effected by mailing the same at any time during the same day, addressed to the solicitor, at his office, by registered letter, postage prepaid, and the service shall be deemed to have been effected at the time of the attendance for that purpose at the office of the solicitor.

<sup>943</sup>  
Substituted  
service.  
[Cf. R. 334, (O)].

**6.** Where personal service of any writ, notice, pleading, summons, order, warrant, or other document, proceeding, or written communication is required by these Rules or otherwise, and it is made to appear to the Court or a Judge that prompt personal service cannot be effected, the Court or Judge may make such order for substituted or other service, or for the substitution of notice for service by letter, public advertisement, or otherwise, as may be just. O. 67, r. 6, (E).

<sup>944</sup>  
Service upon  
solicitor of  
party pre-  
viously  
appearing in  
person.  
[R. 336, (O)].

**7.** Where a party having sued or appeared in person has given notice in writing to the opposite party or his solicitor, through a solicitor, that such solicitor is authorized to act in the cause or matter on his behalf, all writs, notices, pleadings, summonses, orders, warrants, and other documents, proceedings, and written communications which ought to be delivered to or served upon the party on whose behalf the notice is given shall thereafter be delivered to or served upon such solicitor. O. 67, r. 7, (E).

8. Where a person who is not a party appears in any proceeding, either before the Court or in Chambers, service upon the solicitor by whom such person appears, whether such solicitor act as principal or agent, shall be deemed good service, except in matters requiring personal service. O. 67, r. 8, (E).

**O. LXXIII,  
rr. 8, 9.**

<sup>945</sup>  
Service upon  
solicitor of  
person not a  
party.

9. Affidavits of service shall state when, where, and how and by whom, such service was effected. O. 67, r. 9, (E).

<sup>946</sup>  
Affidavits of  
service.

### ORDER LXXIV.

**O. LXXIV,  
rr. 1-3.**

#### APPLICATION OF RULES IN CROWN AND MATRIMONIAL CASES.

1. Subject to the provisions of this Order, nothing in these Rules, save as expressly provided, shall affect the procedure or practice in any of the following causes or matters:—

<sup>947</sup>  
Proceedings  
excepted from  
Rules.  
[Cf. R. 4, (O)].

- (a). Criminal proceedings;
- (b). Proceedings on the Crown side of the Court;
- (c). Proceedings for Divorce or other Matrimonial Causes. O. 68, r. 1, (E), *am.*

2. The following Orders shall, as far as they are applicable, apply to all civil proceedings on the Crown side of the Court, including mandamus and prohibition, and also to *quo warranto*: namely,—

<sup>948</sup>  
Application  
of certain  
Orders to civil  
proceedings  
on Crown side  
of Court.

- (a). Order XXIX. (Amendment);
- (b). Order XXXIV. (Special case);
- (c). Order XXXVII. (Affidavits);
- (d). Order LX. (Motions);
- (e). Order LXVII. (Appeals);
- (f). Order LXIX. (Time);
- (g). Order LXX. (Costs);
- (h). Order LXXII. (Notices, etc.);
- (i). Order LXXV. (Non-compliance);

Provided that Order LXVII shall not apply to *quo warranto*. O. 68, r. 2, (E).

3. Where pleadings in prohibition are ordered, the pleadings and subsequent proceedings, including judgment and assessment of damages, if any, shall be, as nearly as may be, the same as in an ordinary action for damages. O. 68, r. 3, (E).

<sup>949</sup>  
Pleadings in  
prohibition.

**O. LXXV,  
rr. 1-4.**

**ORDER LXXV.**

**EFFECT OF NON-COMPLIANCE.**

<sup>850</sup>  
Non-compliance with Rules not to render proceedings void. (Cf. R.R. 308, 310, (O); see O. 65, r. 27, *ante*).

**1.** Non-compliance with any of these Rules, or with any rule of practice for the time being in force, shall not render any proceedings void unless the Court or a Judge shall so direct, but such proceedings may be set aside either wholly or in part as irregular, or amended, or otherwise dealt with in such manner and upon such terms as the Court or Judge shall think fit. O. 70, r. 1, (E).

<sup>851</sup>  
When application to set aside for irregularity to be made. [R. 311, (O)].

**2.** No application to set aside any process or proceeding for irregularity shall be allowed unless made within reasonable time, nor if the party applying has taken any fresh step after knowledge of the irregularity. O. 70, r. 2, (E), *am*.

<sup>852</sup>  
Objections to be stated in summons, etc. [R. 302, (O)].

**3.** Where an application is made to set aside proceedings for irregularity, the several objections intended to be insisted upon shall be stated in the summons or notice of motion. O. 70, r. 3, (E).

<sup>853</sup>  
Costs.

**4.** When a summons is taken out to set aside any process or proceeding for irregularity with costs, and the summons is dismissed generally without any special direction as to costs, it is to be understood as dismissed with costs. O. 70, r. 4, (E).

**O. LXXVI,  
r. 1.**

**ORDER LXXVI.**

**INTERPRETATION OF TERMS.**

<sup>854</sup>  
Application of Interpretation section in Act.

**1.** The provisions of the Interpretation section of the principal Act shall apply to these Rules.

Interpretation of terms.

In the construction of these Rules, unless there is anything in the subject or context repugnant thereto, the several words hereinafter mentioned or referred to shall have or include the meanings following:—

“Person” includes a body corporate or politic;

“Sheriff” includes deputy-sheriff, coroner, and other person discharging the duties of sheriff in the particular case, or for the time being;

“Solicitor” includes attorney;

"Plaintiff," "defendant," and "party," include bodies corporate or politic, or holding the relation of plaintiff, defendant or party; O. LXXVI,  
r. 2.

"Heretofore" means prior to the coming into force of these Rules;

"Receiver" includes consignee or manager appointed by or under an order of the Court;

"Taxing officer" refers to and includes the Registrar and any Judge of the Court;

"The principal Act", or "this Act" means the Supreme Court of Judicature Act, 1906. O. 71, r. 1, (E), *am.*

2. In these Rules, unless repugnant to the context, the singular number shall include the plural, and the plural number shall include the singular. O. 71, r. 2, (E). 965  
Number.

## ORDER LXXVII.

O. LXXVII,  
rr. 1-4.

### GENERAL RULES.

1. No Order or Rule annulled by any former Order shall be revived by any of these Rules, unless expressly so declared. O. 72, r. 1, (E). 966  
Repealed  
Orders not  
revived.

2. Where no other provision is made by the principal Act or these Rules, the present procedure and practice remain in force. O. 72, r. 2, (E). 967  
Continuation  
of present  
practice.  
[R. 3, (O)].

3. The Forms contained in the Appendices hereto shall be used with such variations or modifications as circumstances may require; but any variance therefrom not being in matter of substance, shall not affect their regularity. R. 1224, (O). 968  
Forms.

4. During the period of any vacancy in the office of Chief Justice, or, in his absence, these Rules shall operate as if the words "(or senior Judge of the Supreme Court of Judicature)" were inserted after the words "Chief Justice" whenever used. 969  
Vacancy in  
office of Chief  
Justice. Set C1

## APPENDICES.

## FORMS, TABLE OF FEES, ETC.

**App. A.**  
**Pt. I.**  
**No. I.**

## APPENDIX A.

## PART I.

## FORMS OF WRITS OF SUMMONS, &c.

No. 1.

### General Form of Writ of Summons (O. L. r. 3.)

**In the Supreme Court of Judicature.**

Between A. B., Plaintiff,  
and  
C. D., Defendant.

EDWARD THE SEVENTH, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, &c.

To C. D. of \_\_\_\_\_, in the County of \_\_\_\_\_

We command you, That within ten days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in an action at the suit of A. B.; And take notice that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness \_\_\_\_\_, Chief Justice,  
the \_\_\_\_\_ day of \_\_\_\_\_, in the year of Our Lord One  
thousand nine hundred and \_\_\_\_\_.

Issued the            day of            , A. D. 19    .

*Memorandum to be subscribed on the writ.*

N. B.—This writ is to be served within twelve calendar months from the date thereof, or, if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

*Indorsements to be made on the writ before issue thereof.*

APP. A.  
Pt. I.  
Nos. 1, 2.

The plaintiff's claim is for, &c.

This writ was issued by the said plaintiff, who resides at ,  
or, this writ was issued by E. F., of ; whose place  
of business and address for service is , solicitor for the  
said plaintiff, who resides at [mention the city, town,  
or parish, and also the name of the street and number of the  
house of the plaintiff's residence, if any].

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No. 2.

Specially Indorsed Writ, Order II, Rule 5 (O. 1, r. 3).

In the Supreme Court of Judicature.

Between A. B., Plaintiff,  
and  
C. D., Defendant.

EDWARD THE SEVENTH, by the Grace of God, of the United  
Kingdom of Great Britain and Ireland, and of the British  
Dominions beyond the Seas, King, Defender of the Faith, &c.

To C. D. of , in the County of .

We command you, That within ten days after the service  
of this writ on you, inclusive of the day of such service, you do  
cause an appearance to be entered for you in an action at the  
suit of A. B.; And take notice, that in default of your so  
doing the plaintiff may proceed therein, and judgment may be  
given in your absence.

Witness , Chief Justice,  
the day of , in the year of Our Lord, One  
thousand nine hundred and .

Issued the day of , A. D. 19 .

*Memorandum to be subscribed on the writ.*

N. B.—This writ is to be served within twelve calendar  
months from the date thereof, or, if renewed, within six cal-  
endar months from the date of the last renewal, including the  
day of such date, and not afterwards.

**APP. A.**  
**PT. I.**  
**NO. 2, 3.**

*Indorsements to be made on the writ before issue thereof.*

*Statement of Claim:—*

The plaintiff's claim is .

Particulars:—

(Signed.)

And the sum of \$ [or such sum as may be allowed on taxation], for costs, besides sheriff's fees. If the amount claimed is paid to the plaintiff or his solicitor within six days from the service hereof, further proceedings will be stayed.

This writ was issued, &c. [*as in Form No. 1*].

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No. 3.

Writ for Service out of the Jurisdiction, or where Notice in lieu of Service is to be given out of the Jurisdiction (O. 1, r. 5).

In the Supreme Court of Judicature.

Between A. B., Plaintiff,

and

C. D., Defendant.

EDWARD THE SEVENTH, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, &c.

To C. D. of .

We command you, C. D., that within [*here insert the number of days directed by the Court or Judge ordering the service or notice*] after the service of this writ [*or notice of this writ, as the case may be*] on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the Supreme Court of Judicature in an action at the suit of A. B.; and take notice, that in default of your so doing, the plaintiff may proceed therein, and judgment may be given in your absence.

Witness, &c. [*as in Form No. 1*].

Issued, &c. [*as in Form No. 1*].

*Memorandum and Indorsements as in Form No. 1.*

*Indorsements to be made on the writ before the issue thereof.*

APP. A.  
PT. I.  
No. 4.

N. B.—This writ is to be used where the defendant or all the defendants or one or more defendant or defendants is or are out of the jurisdiction. When the defendant to be served is not a British subject, and is not in British Dominions, notice of the writ, and not the writ itself, is to be served upon him.

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No. 4.

**Specially Indorsed Writ for Service out of the Jurisdiction** (O. 1, r. 5).

In the Supreme Court of Judicature.

Between A. B., Plaintiff,  
and  
C. D., Defendant.

EDWARD THE SEVENTH, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, &c.

To \_\_\_\_\_, of \_\_\_\_\_, in the \_\_\_\_\_ of \_\_\_\_\_.

We command you, That within [*here insert number of days directed by the Court or Judge ordering the service or notice*] days after the service of this writ [*or, notice of this writ, as the case may be*] on you, inclusive of the day of such service, you do cause an appearance to be entered for you in an action at the suit of \_\_\_\_\_.

And take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness \_\_\_\_\_, Chief Justice,  
the \_\_\_\_\_ day of \_\_\_\_\_, in the year of Our Lord One thousand nine hundred and \_\_\_\_\_

Issued the \_\_\_\_\_ day of \_\_\_\_\_, A. D., 19 \_\_\_\_.

N. B.—This writ is to be served within twelve calendar months from the date thereof, or if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.



App. A.  
Pt. I.  
Nos. 4, 5.

*Indorsements to be made on the writ before the issue thereof.*

*Statement of Claim:—*

The Plaintiff's claim is

Particulars:—

(Signed)

And \$ [or such sum as may be allowed on taxation] for costs. If the amount claimed is paid to the plaintiff or his solicitor within [*here insert number of days limited for appearance*] days from the service [*if notice to be served, insert here "of notice"*] hereof, further proceedings will be stayed.

This writ was issued by the said plaintiff, who resides at or, this writ was issued by E. F., of ; whose place of business and address for service is , solicitor for the said plaintiff, who resides at , [*mention the city, town, or parish, and also the name of the street and number of the house of the plaintiff's residence, if any*].

N. B.—This writ is to be used where the defendant, or all the defendants, or one or more defendant or defendants, is or are out of the jurisdiction. When the defendant to be served is not a British subject, and is not in British dominions, notice of the writ, and not the writ itself, is to be served upon him.

No. 5.

Notice of Writ in lieu of Service to be given out of the Jurisdiction.  
(O. 1, r. 5).

In the Supreme Court of Judicature.

Between A. B., Plaintiff,

and

C. D., Defendant.

EDWARD THE SEVENTH, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, &c.

To G. H., of

Take notice, that A. B., of , has commenced an action against you, G. H., in the Supreme Court of Judicature of

New Brunswick, by writ of that Court, dated the       day of       , A. D. 19   ; which writ is indorsed as follows [*copy in full the indorsements*], and you are required within days after the receipt of this notice, inclusive of the day of such receipt, to defend the said action, by causing an appearance to be entered for you in the said Court to the said action, and in default of your so doing, the said A. B. may proceed therein, and judgment may be given in your absence.

APP. A.  
PT. I.  
No. 6.

You may appear to the said writ by filing an appearance personally, or by your solicitor, at the Registrar's office, Supreme Court of Judicature, Fredericton, N. B., and delivering a copy thereof to the plaintiff or his solicitor.

(Signed)       A. B. of       etc.  
                 or X. Y. of       etc.  
                 Solicitor for A. B.

N. B.—This notice is to be used where the person to be served is not a British subject, and is not in British dominions.

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No. 6.

Writ of Capias (O. 65, r. 1.)

In the Supreme Court of Judicature.

EDWARD THE SEVENTH, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, &c.

To the Sheriff of the County of       , Greeting:

We command you [*or as before, &c.*] that you take C. D., if he shall be found in your bailiwick, and him safely keep until he shall have given you bail in an action at the suit of A. B., or until he shall be otherwise lawfully discharged; and that immediately after the execution hereof you return this writ, stating how you have executed the same, and the day of the execution thereof.

Witness, &c.

*Memorandum to be subscribed on the writ.*

N. B.—This writ is to be executed within two months from the date thereof, inclusive, and not afterwards.

APP. A.  
Pt. I.  
No. 7.

*Indorsements to be made on the writ before issue thereof.*

The plaintiff's claim is for, &c.

Bail by affidavit for \$ (or Bail for \$ , by order of, *naming the Judge who made the order*).

This writ was issued by the said plaintiff, who resides at , or, this writ was issued by E. F., of ; whose place of business and address for service is , solicitor for said plaintiff, who resides at [mention the city, town, or parish and also the name of the street and number of the house of the plaintiff's residence, if any.]

Dated the day of , A. D., 19 .

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No. 7.

Notice to be Subscribed on Copy of Capias (O. 65, r. 5.)

1. Take notice, that if a defendant having been arrested on this writ shall go to prison for want of bail, shall not enter an appearance within ten days after such arrest, inclusive of the day of such arrest, the plaintiff may proceed to judgment and execution.

2. Take notice, that if a defendant, having given bail to the Sheriff on the arrest, shall omit to put in special bail within twenty days thereafter, inclusive of the day of such arrest, the plaintiff may proceed against the Sheriff or on the bail bond.

3. Take notice, that if a defendant, having been served only with this writ, and not arrested thereon, shall not enter an appearance within ten days after such service, inclusive of the day of such service, the plaintiff may proceed to judgment and execution.

E. F. *Plaintiff's Solicitor.*

WRIT OF CAPIAS.

271

No. 8.

APP. A.  
PT. I.  
No. 8.

Capias in an Action Already Commenced (O. 65, r. 2.)

In the Supreme Court of Judicature.

Between A. B., Plaintiff,

and

C. D., Defendant.

EDWARD THE SEVENTH, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, &c.

To the Sheriff of the County of \_\_\_\_\_, Greeting:

We command you that you take C. D., if he shall be found in your bailiwick, and him safely keep until he shall have given you bail in an action which A. B. has commenced against him, and which is now pending, or until he shall be otherwise lawfully discharged; and that immediately after execution hereof you return this writ, stating how you shall have executed the same, and the day of the execution thereof.

Witness \_\_\_\_\_, Chief Justice,  
the \_\_\_\_\_ day of \_\_\_\_\_ in the year of Our Lord One thousand nine hundred and \_\_\_\_\_.

*Memorandum to be subscribed on the writ.*

N. B.—This writ is to be executed within two months from the date thereof, including the day of such date, and not afterwards.

*Indorsement to be made on the writ before issue thereof.*

Bail by affidavit for \$ \_\_\_\_\_ [or Bail for \$ \_\_\_\_\_, by order of, naming the Judge who made the order].

This writ was issued by the said plaintiff, who resides at \_\_\_\_\_  
or, this writ was issued by E. F., of \_\_\_\_\_; whose place of business and address for service is \_\_\_\_\_, solicitor for the said plaintiff, who resides at \_\_\_\_\_ [mention the city, town, or parish, and also the name of the street and number of the house of the plaintiff's residence, if any].

Dated the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 19 \_\_\_\_\_.

APP. A.  
Pt. II.  
No. 1.

*Notice to be subscribed on copy of writ.*

1. Take notice that this suit, which was commenced by a writ of summons, will be continued in like manner as if the defendant had not been arrested on this writ.

2. Take notice, that if the defendant, having giving bail to the Sheriff on the arrest on this writ, shall omit to put in special bail within twenty days after arrest, the plaintiff may proceed against the Sheriff, or on the bail bond.

E. F., *Plaintiff's Solicitor.*

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## PART II.

### FORM OF APPEARANCE, ETC.

#### No. 1.

#### Memorandum of Appearance (O. 12, r. 1.)

In the Supreme Court of Judicature.

Between A. B., Plaintiff,  
and  
C. D., Defendant.

The defendant appears by the undersigned solicitor, whose place of business and address for service is [or the defendant appears in person. The defendant's address for service is, &c.] *[If statement of claim is required, add, The said defendant requires delivery of a statement of claim].*

Dated the                      day of                      , A. D., 19                      .

Solicitor for the said defendant  
[or, the above named defendant].

No. 2.

APP. A.  
Pt. II.  
No. 2.

Affidavit for Entry of Appearance as Guardian (O. 16, r. 16.)

In the Supreme of Judicature.

Between A. B., Plaintiff,  
and  
C. D., Defendant.

I,                      of                      , make oath and say as follows:—

X. Y., of                      , is a fit and proper person to act as guardian *ad litem* of the above-named infant defendant, and has no interest in the matters in question in this action [matter] adverse to that of the said infant, and the consent of the said X. Y. to act as such guardian is hereto annexed.

Sworn, &c.

[To this Affidavit shall be annexed the document signed by such guardian in testimony of his consent to act.]

PART III.

APP. A.  
Pt. III.  
Sec. 1.

General Indorsements on Writs of Summons (O. 2, r. 3.)

Section I.

*In Matters of an Equitable Nature.*

1.—CREDITOR TO ADMINISTER ESTATE.

The plaintiff's claim is as a creditor of X. Y. of deceased, to have the [real and] personal estate of the said X. Y. administered. The defendant, C. D., is sued as the administrator [or, as the executor] of the said X. Y. [and the defendants, E. F. and G. H., as his co-heirs-at-law] [or, as the devisees of his real estate].

2.—LEGATEE TO ADMINISTER ESTATE.

The plaintiff's claim is as a legatee under the will dated the day of                      , 18                      , of X. Y., deceased, to have the [real and] personal estate of the said X. Y. administered. The defendant, C. D., is sued as the executor of the said X. Y. [and the defendants, E. F. and G. H., as his devisees].

App. A.  
Pt. III.  
Sec. 1.

## 3.—PARTNERSHIP.

The plaintiff's claim is to have an account taken of the partnership dealings between the plaintiff and defendant [under articles of partnership dated the       day of       ], and to have the affairs of the partnership wound up.

## 4.—FORECLOSURE.

The plaintiff's claim is for the foreclosure of a mortgage dated the       day of       , A. D.       , made by       to       , of the following described lands [set out description in mortgage, or description sufficient for registration] and for the sale of such lands in payment of the amount due on the mortgage. The plaintiff claims that there is now due on said mortgage for principal the sum of \$       . [If so, add, together with the sum of \$       , for taxes (or, premiums of insurance, or, as the case may be)], and the sum of \$       for interest from [date of mortgage, or, as the case may be] to the date of this summons.

## 5.—REDEMPTION.

The plaintiff's claim is to have an account taken of what, if anything, is due on a mortgage dated       , and made between [parties], and to redeem the property comprised therein.

## 6.—RAISING PORTIONS.

The plaintiff's claim is that the sum of \$       , which by an indenture of settlement dated       was provided for the portions of the younger children of       , may be raised.

## 7.—EXECUTION OF TRUSTS.

The plaintiff's claim is to have the trusts of an indenture, dated       and made between       , carried into execution.

## 8.—CANCELLATION OR RECTIFICATION.

The plaintiff's claim is to have a deed, dated       , and made between [parties], set aside or rectified.

9.—SPECIFIC PERFORMANCE.

APP. A.  
PT. III.  
SEC. II.

The plaintiff's claim is for specific performance of an agreement, dated the      day of      , for the sale by the plaintiff to the defendant of certain [*freehold*] hereditaments at      .

Section II.

Money Claims Where no Special Indorsement Under Order II. Rule 5.

The plaintiff's claim is \$ . . . . for the price of goods sold.

[*This Form shall suffice whether the claim is in respect to goods sold and delivered, or to goods bargained and sold.*]

The plaintiff's claim is \$ . . . . for money lent [and interest].

The plaintiff's claim is \$ . . . . , whereof \$ . . . . is for the price of goods sold, and \$ . . . . for money lent, and \$ . . . . for interest.

The plaintiff's claim is \$ . . . . for arrears of rent.

The plaintiff's claim is \$ . . . . for arrears of salary as a clerk [*or as the case may be*].

The plaintiff's claim is \$ . . . . for interest upon money lent.

The plaintiff's claim is \$ . . . . for a general average contribution.

The plaintiff's claim is \$ . . . . for freight and demurrage.

The plaintiff's claim is \$ . . . . for lighterage.

The plaintiff's claim is \$ . . . . for market tolls and stallage.

The plaintiff's claim is \$ . . . . for penalties under the Statute.

The plaintiff's claim is \$ . . . . for money deposited with the defendant as a banker.

The plaintiff's claim is \$ . . . . for fees for work done [*and \$ . . . . money expended*] as a solicitor.

The plaintiff's claim is \$ . . . . for commission earned as [*state character, as auctioneer, broker, &c*].

The plaintiff's claim is \$ . . . . for medical attendances.

The plaintiff's claim is \$ . . . . for a return of premiums paid upon policies of insurance.

The plaintiff's claim is \$ . . . . for the warehousing of goods.

The plaintiff's claim is \$ . . . . for the carriage of goods by railway.

The plaintiff's claim is \$ . . . . for the use and occupation of a house.



**APP. A.**  
**PT. III.**  
**SEC. III.**

The plaintiff's claim is \$. . . . for the hire of [*furniture*].

The plaintiff's claim is \$. . . . for work done as a surveyor.

The plaintiff's claim is \$. . . . for board and lodging.

The plaintiff's claim is \$. . . . for the board, lodging and tuition of X.Y.

The plaintiff's claim is \$. . . . for money received by the defendant as solicitor [*or factor, or collector, or, &c.*], of the plaintiff.

The plaintiff's claim is \$. . . . for fees received by the defendant under colour of the office of . . . .

The plaintiff's claim is \$. . . . for a return of money overcharged for the carriage of goods by railway.

The plaintiff's claim is \$. . . . for a return of fees overcharged by the defendant as . . . .

The plaintiff's claim is \$. . . . for a return of moneys deposited with the defendant as stakeholder.

The plaintiff's claim is \$. . . . for money entrusted to the defendant as stakeholder, and payable to plaintiff.

The plaintiff's claim is \$. . . . for a return of money entrusted to the defendant as agent of the plaintiff.

The plaintiff's claim is \$. . . . for a return of money obtained from the plaintiff by fraud.

The plaintiff's claim is \$. . . . for a return of money paid to the defendant by mistake.

The plaintiff's claim is \$. . . . for a return of money paid to the defendant for [work to be done, left undone; *or*, a bill to be taken up; not taken up, *or*, &c.]

The plaintiff's claim is \$. . . . for a return of money paid as a deposit upon shares to be allotted.

The plaintiff's claim is \$. . . . for money paid for the defendant as his surety.

The plaintiff's claim is \$. . . . for money paid for rent due by the defendant.

The plaintiff's claim is \$. . . . upon a bill of exchange accepted [*or indorsed*] for the defendant's accommodation.

The plaintiff's claim is \$. . . . for a contribution in respect to money paid by the plaintiff as surety.

The plaintiff's claim is \$. . . . for a contribution in respect to a joint debt of the plaintiff and the defendant paid by the plaintiff.

The plaintiff's claim is \$ . . . for money paid for calls upon shares, against which the defendant was bound to indemnify the plaintiff.

The plaintiff's claim is \$ . . . for money payable under an award.

The plaintiff's claim is \$ . . . upon a policy of insurance upon the life of X. Y., deceased.

The plaintiff's claim is \$ . . . upon a bond to secure a payment of \$1000, and interest.

The plaintiff's claim is \$ . . . upon a judgment of the Court in the State of Massachusetts.

The plaintiff's claim is \$ . . . upon a check drawn by the defendant.

The plaintiff's claim is \$ . . . upon a bill of exchange accepted [*or drawn or indorsed*] by the defendant.

The plaintiff's claim is \$ . . . upon a promissory note made [*or indorsed*] by the defendant.

The plaintiff's claim is \$ . . . against the defendant A. B., as acceptor, and against the defendant C. D., as drawer [*or indorser*] of a bill of exchange.

The plaintiff's claim is \$ . . . against the defendant as surety for the price of goods sold.

The plaintiff's claim is \$ . . . against the defendant A. B., as principal, and against the defendant C. D., as surety, for the price of goods sold [*or arrears of rent, or for money lent, or for money received by the defendant A. B., as traveller for the plaintiff, or, &c.*]

The plaintiff's claim is \$ . . . against the defendant as a *del credere* agent for the price of goods sold [*or as losses under a policy*].

The plaintiff's claim is \$ . . . for calls upon shares.

The plaintiff's claim is \$ . . . for crops, tillage, manure, [*or as the case may be*] left by the plaintiff as outgoing tenant of a farm.

APP. A.  
PT. III.  
SEC. III.

### Section III.

#### Indorsement for Costs (O. 2, r. 6).

*Add to the above forms:—*

And \$.... [*or such sum as may be allowed on taxation*] for costs, besides sheriff's fees; and if the amount claimed be paid to the plaintiff or his solicitor within six days [*or if the writ is to be served out of the jurisdiction, or notice in lieu of service allowed, insert the time for appearance limited by order*], from the service hereof, further proceedings will be stayed.

APP. A.  
PT. III.  
SEC. IV.

### Section IV.

#### Damages and other Claims.

The plaintiff's claim is that an account be taken of [*say what*].

The plaintiff's claim is for damages for breach of a contract to employ the plaintiff as traveller.

The plaintiff's claim is for damages for wrongful dismissal from the defendant's employment as traveller [and \$.... for arrears of wages].

The plaintiff's claim is for damages for the defendant's wrongfully quitting the plaintiff's employment as manager.

The plaintiff's claim is for damages for breach of duty as factor [*or, &c.*] of the plaintiff [and \$.... for money received as factor, &c.].

The plaintiff's claim is for damages for breach of the terms of a deed of apprenticeship of X. Y. to the defendant [*or plaintiff*].

The plaintiff's claim is for damages for non-compliance with the award of X. Y.

The plaintiff's claim is for damages for assault and false imprisonment [and for malicious prosecution].

The plaintiff's claim is for damages for assault and false imprisonment of the plaintiff, C. D.

The plaintiff's claim is for damages for injury by the defendant's negligence as solicitor of the plaintiff.

The plaintiff's claim is for damages for negligence in the custody of goods [and for wrongfully detaining the same].

The plaintiff's claim is for damages for negligence in the keeping of goods pawned [and for wrongfully detaining the same].

APP. A.  
Pt. III.  
Sec. IV.

The plaintiff's claim is for damages for negligence in the custody of furniture lent on hire [or a carriage lent], [and for wrongfully, &c.]

The plaintiff's claim is for damages for wrongfully neglecting [or refusing] to pay the plaintiff's cheque.

The plaintiff's claim is for damages for breach of a contract to accept the plaintiff's drafts.

The plaintiff's claim is upon a bond conditioned not to carry on the trade of a . . . .

The plaintiff's claim is for damages for refusing to carry the plaintiff's goods by railway.

The plaintiff's claim is for damages for refusing to carry the plaintiff by railway.

The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of coals by railway.

The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of machinery by sea.

The plaintiff's claim is for damages for breach of charter-party of ship ["Mary"].

The plaintiff's claim is for return of household furniture, [or, &c.] or their value, and for damages for detaining the same.

The plaintiff's claim is for wrongfully depriving plaintiff of goods, household furniture, &c.

The plaintiff's claim is for damages for libel contained in [state sufficient particulars to identify the publications].

The plaintiff's claim is for damages for slander.

The plaintiff's claim is in replevin for goods wrongfully distrained.

The plaintiff's claim is for damages for improperly distraining.

[*This form shall be sufficient, whether the distress complained of is wrongful or excessive, or irregular, and whether the claim is for damages only, or for double value.*]

The plaintiff's claim is to recover possession of a house, No. . . . . in . . . . . street [or of a farm called *Blackacre*], situate in the parish of . . . . . in the county of . . . . .

The plaintiff's claim is to establish his title to [*here describe property*], and to recover the rents thereof.

[*The two previous forms may be combined.*]

**App. A.**  
**Pt. III.**  
**Sec. IV.**

The plaintiff's claim is for damages for infringement of the plaintiff's right of fishing.

The plaintiff's claim is for damages for fraudulent misrepresentation on the sale of a horse [*or a business, or shares, or, &c.*]

The plaintiff's claim is for damages for fraudulent misrepresentation of the credit of A. B.

The plaintiff's claim is for damages for breach of a contract of guarantee for A. B.

The plaintiff's claim is for damages for breach of a contract to indemnify the plaintiff as the defendant's agent to distrain

The plaintiff's claim is for a loss under a policy upon the ship "Royal Charter," and freight or cargo [*or for a return of premiums*].

*[This form shall be sufficient whether the loss claimed is total or partial.]*

The plaintiff's claim is for a loss under a policy of fire insurance upon house and furniture.

The plaintiff's claim is for damages for breach of a contract to insure a house.

The plaintiff's claim is for damages for breach of a contract to keep a house in repair.

The plaintiff's claim is for damages for breaches of covenants contained in a lease of a farm.

The plaintiff's claim is for damages for injury to the plaintiff from the defendant's negligence as a medical man.

The plaintiff's claim is for damages for injury by the defendant's dog.

The plaintiff's claim is for damages for injury to the plaintiff by the negligent driving of the defendant or his servants.

The plaintiff's claim is for damages for injury to the plaintiff while a passenger on the defendant's railway, by the negligence of the defendant's servants.

The plaintiff's claim is for damages for injury to the plaintiff at the defendant's railway station, from the defective condition of the station.

The plaintiff's claim is as executor of A. B., deceased, for damages for the death of the said A. B. from injuries received

while a passenger on the defendant's railway, by the negligence of the defendant's servants.

The plaintiff's claim is for damages for breach of promise of marriage.

The plaintiff's claim is for damages for the seduction of the plaintiff's daughter.

The plaintiff's claim is for damages for breach of contract to accept and pay for goods.

The plaintiff's claim is for damages for non-delivery [*or short delivery, or defective quality, or other breach of contract of sale*] of cotton, *or, &c.*

The plaintiff's claim is for damages for breach of warranty of a horse.

The plaintiff's claim is for damages for breach of a contract to sell [*or purchase*] land.

The plaintiff's claim is for damages for breach of a contract to let [*or take*] a house.

The plaintiff's claim is for damages for breach of a contract to sell [*or purchase*] the lease, with goodwill, fixtures, and stock in trade of a public house.

The plaintiff's claim is for damages for breach of covenant for title [*or for quiet enjoyment, or, &c.*], in a conveyance of land.

The plaintiff's claim is for damages for wrongfully entering the plaintiff's land, and drawing water from his well, [*or cutting his grass, or pulling down his timber, or pulling down his fences, or removing his gate, or using his road or path, or crossing his field, or depositing sand there, or carrying away gravel thence, or carrying away stones from his river*].

The plaintiff's claim is for damages for wrongfully taking away the support of plaintiff's land [*or house or mine*].

The plaintiff's claim is for damages for wrongfully obstructing a way [*public highway or private way*].

The plaintiff's claim is for damages for wrongfully diverting [*or obstructing, or polluting, or diverting water from*] a water-course.

The plaintiff's claim is for damages for wrongfully discharging water upon the plaintiff's land [*or into the plaintiff's mine*].

APP. A.  
PT. III.  
SEC. IV.

The plaintiff's claim is for damages for wrongfully obstructing the plaintiff's use of a well.

The plaintiff's claim is for damages for the infringement of the plaintiff's right of pasture. [*This form shall be sufficient whatever the nature of the right to pasture is.*]

The plaintiff's claim is for damages for the infringement of the plaintiff's patent.

The plaintiff's claim is for damages for the infringement of the plaintiff's copyright.

The plaintiff's claim is for damages for wrongfully using [*or imitating*] the plaintiff's trade mark.

The plaintiff's claim is for damages for breach of a contract to build a ship [*or to repair a house, &c.*].

The plaintiff's claim is for damages for breach of a contract to employ the plaintiff to build a ship, &c.

The plaintiff's claim is for damages to his house, trees, crops, &c., caused by noxious vapours from the defendant's factory [*or, &c.*].

The plaintiff's claim is for damages from nuisance by noise from the defendant's works [*or stables, or, &c.*].

The plaintiff's claim is for damages for loss of the plaintiff's goods in the defendant's inn.

*Add to indorsement (O. 48, r. 2):—*

And for a mandamus commanding the defendant to.....

*Add to indorsement:—*

And for an injunction to restrain the defendant from.....

*Add to indorsement where claim is to land, or to establish title, or both:—*

And for mesne profits.

And for an account of rent or arrears of rent.

And for breach of covenant for [*repairs*].

APP. A.  
PT. III.  
SEC. V.

#### Section V.

**Indorsements of Character of Parties (O 2, r. 4).**

The plaintiff's claim is as executor [*or administrator*] of

APP. A.  
Pt. III.  
Sec. V.

The plaintiff's claim is against the defendant, A. B., as executor [*or, &c.*] of C. D., deceased, for, &c.

The plaintiff's claim is against the defendant, A. B., as executor of X. Y., deceased, for, &c., and against the defendant, C. D., in his personal capacity, for, &c.

The plaintiff's claim is as assignee under the insolvency of A. B. for

The plaintiff's claim is as [*or the plaintiff's claim is against the defendant as*] trustee under the will of A. B. [*or under the settlement upon the marriage of A. B. and X. Y., his wife*].

The plaintiff's claim is as public officer of the bank, for

The plaintiff's claim is against the defendant as public officer of the bank, for

The plaintiff's claim is against the defendant, A. B., as principal, and against the defendant, C. D., as public officer of the bank, as surety, for

The plaintiff's claim is against the defendant as heir-at-law of A. B., deceased.

The plaintiff's claim is against the defendant, C. D., as heir-at-law, and against the defendant, E. F., as devisee of lands under the will of A. B.

The plaintiff's claim is as well for the King as for himself, for



## AFFIDAVITS OF SERVICE

No. 3.

App. B.  
Pt. I.  
Nos. 3, 4.

Service on a Partner in a Firm (O. 50, r. 3).

*[Title and commencement as in Form No. 1].*

1. I did on the                      day of                      , 19   at *[state where]* personally serve C. D., a partner in the above-named defendant firm of C. D. & Co., with a true copy of *(proceed as in Form No. 1 to the end of paragraph 3).*

*[If the partner was also served with notice that he was served as a partner, add the following paragraph].*

4. I did also at the time of the said service deliver to the said C. D. a notice in writing that the said writ of summons was served on him as a partner in the said defendant firm.

No. 4.

Service on Manager of Firm (O. 50, r. 3).

*Title and commencement as in Form No. 1].*

1. I did on the                      day of                      , 19   at                      , being the principal place of business of the above-named Defendant partnership within the jurisdiction of this Honorable Court, personally serve E. F. the person having at the time of such service the control or management of the said partnership business there, with a true copy of the annexed writ of summons in this action by delivering to him a true copy of the said writ of summons.

*(Proceed as in Form No. 1 to the end of paragraph 3).*

4. I did at the time of the said service deliver to the person so served as aforesaid a notice in writing that the said writ of summons was served upon him as the person having the control or management of the partnership business of the said defendant firm.

[FORM OF NOTICE.—Take notice that the writ served herewith is served on you as the person having the control or management of the partnership business of the above-named defendant firm of                      . *(If the person served is also served as a partner add the words, and also as a partner in the said firm).]*

App. B.  
Pt. I.  
Nos. 5, 6.

## No. 5.

Service on Inmate at Dwelling (O. 8, r 2 (2)).

[*Title and Commencement as in Form No. 1.*]

I did, on the                      day of                      , deliver a true copy of the annexed writ of summons in this action at the house of C. D., the defendant named in such writ of summons [or the house of any other person, as the case may be], situate in the parish of                      , in the county of                      , unto E. F., the wife of such defendant [or to G. H., an adult person residing in the said house, and known to this deponent as a member or inmate in the said family of such defendant]; and I say, that the said house was, at the time of such delivery, the usual place of abode of such defendant,\* and that the said defendant was, at the time of such service, within the limits of this Province, as I know, for the following reasons [*here state the particular means of knowledge the deponent has of the defendant being within the Province; if this fact is not known to the serving officer, it may be proved by the affidavit of another person; and the affidavit of the serving officer may omit the words after the \*, and conclude as follows:—*] and I verily believe that, at the time of such service, the defendant was within this Province.

(*Proceed as in Paragraphs 2 and 3 in Form No. 1, with necessary modifications.*)

Sworn, &c.

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No. 6.

Substituted Service by Post.

[*Title and commencement as in Form No. 1.*]

1. That I did, on the                      day of                      19                      , serve the above-named defendant, C. D., with a true copy of the annexed writ of summons in this action, and a true copy of the annexed order of Mr. Justice                      , for substituted service herein, by posting the same at the post office at                      in a prepaid letter or envelope addressed to the said defendant at                      pursuant to the said order.

2. That the said copy of said writ of summons so posted

by me as aforesaid, was subscribed and indorsed with a true copy of all the notices and indorsements subscribed and indorsed on said writ.

App. B.  
Pt. I.  
No. 7.

Sworn, &c.

\_\_\_\_\_  
No. 7.

Service of Notice of Writ by Advertisement (O. 8, r. 2 (4)).

*[Title and commencement as in Form No. 1.]*

1. That I did, on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, serve the above-named defendant, C. D., with notice of the annexed writ of summons in this action and of the order for service by advertisement dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by causing to be inserted once in *[Royal Gazette, or name of paper as ordered]* an advertisement in the words following, namely :—

*[Title, &c.]*

To the above-named defendant, C. D.

Take notice that this action was on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, commenced against you, and that the plaintiff by his writ of summons claims *[here copy the claim indorsed on the writ]*.

And take notice that the Court has, by order dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, authorized service of the said writ of summons on you by the insertion of this notice once in *[Royal Gazette, or name of paper as ordered]*.

And further take notice that you are required within *[number of days allowed by order]* days after the insertion of this advertisement, inclusive of the day of such insertion, to cause an appearance to be entered for you in said action and that in default of your so doing the plaintiff may proceed with this action, and judgment may be given against you in your absence.

2. The advertisement aforesaid appeared in the issue of said *[Royal Gazette, or name of paper]*, published and issued on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_. *[as the case may be]*.

Sworn, &c.

PART II.  
NOTICES, ETC.

No. 1.

Third Party Notice (O. 16, r. 35).

In the Supreme Court of Judicature.

Between A. B., Plaintiff,

and

C. D., Defendant.

To Mr. X. Y.

Take notice that this action has been brought by the plaintiff, against the defendant [as surety for M. N., upon a bond conditioned for payment of \$2,000 and interest to the plaintiff.

The defendant claims to be entitled to contribution from you to the extent of one-half of any sum which the plaintiff may recover against him, on the ground that you are (his co-surety under the said bond ; *or*, also surety for the said M. N. in respect of the said matter, under another bond made by you in favor of the said plaintiff, dated the      day of  
A. D. 19    .)]

*Or* [as acceptor of a bill of exchange for \$500, dated the      day of      , 19      , drawn by you upon and accepted by the defendant, and payable three months after date.

The defendant claims to be indemnified by you against liability under the said bill, on the ground that it was accepted for your accommodation].

*Or* [to recover damages for a breach of a contract for the sale of and delivery to the plaintiff of 1000 tons of coal.

The defendant claims to be indemnified by you against liability in respect of the said contract, or any breach thereof, on the ground that it was made by him on your behalf and as your agent].

And take notice that, if you wish to dispute the plaintiff's claim in this action as against the defendant C. D., or your liability to the defendant C. D., you must cause an appearance to be entered for you within ten days after service of this notice.

In default of your so appearing, you will be deemed to admit the validity of any judgment obtained against the defendant C. D., and your own liability to contribute or indemnify to the extent herein claimed, which may be summarily enforced against you pursuant to the Rules of the Supreme Court of Judicature.

APP. B.  
PT. II.  
Nos. 2, 3, 4.

(Signed) C. D.  
or X. Y.,  
Solicitor for the defendant, C. D.

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No. 2.

Notice of Counterclaim (O. 21, r. 11).

*[Heading as in Form 1.]*

To the within-named X. Y.

Take notice that if you do not appear to the within counterclaim of the within-named C. D. within ten days from the service of this defence and counterclaim upon you, you will be liable to have judgment given against you in your absence.

---

No. 3.

Notice of Payment into Court (O. 22, r. 4).

*[Heading as in Form 1.]*

Take notice that the defendant has paid into Court \$ , and says that that sum is enough to satisfy the plaintiff's claim [or, the plaintiff's claim for, &c.]

Dated the       day of       , 19       .

M. Z., Defendant's solicitor

To Mr. X. Y., the Plaintiff's solicitor.

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No. 4.

Acceptance of Sum Paid into Court (O. 22, r. 7).

*[Heading as in Form 1.]*

Take notice that the plaintiff accepts the sum of \$       paid by you into Court in satisfaction of the claim in respect of which it is paid in.

APP. B.  
PT. II.  
Nos. 5, 6, 7.

## No. 5.

Confession of Defence (O. 24, r. 3).

[*Heading as in Form 1.*]

The plaintiff confesses the defence stated in the paragraph of the defendant's defence [or, of the defendant's further defence].

## No. 6.

Interrogatories (O. 31, r. 3).

In the Supreme Court of Judicature.

Between A. B., Plaintiff,

and

C. D., E. F., and G. H., Defendants.

Interrogatories on behalf of the above-named [*plaintiff or defendant C. D.*] for the examination of the above-named [*defendants E. F. and G. H., or plaintiff*].

1. Did not, &c.

2. Has not, &c.

&c.      &c.      &c.

[*The defendant E. F., is required to answer the interrogatories numbered .*]

[*The defendant G. H., is required to answer the interrogatories numbered .*]

## No. 7.

Answer to Interrogatories (O. 31, r. 8).

[*Heading as in No. 6, supra.*]

The answer of the above-named defendant E. F., to the interrogatories for his examination by the above-named plaintiff.

In answer to the said interrogatories, I, the above-named E. F., make oath and say as follows:—

## No. 8.

App. B.  
Pt. II.  
No. 8.

Affidavit as to Documents (O. 31, r. 12).

*[Heading as in Form 1.]*

I, the above-named defendant C. D., make oath and say as follows:—

1. I have in my possession or power the documents relating to the matters in question in this suit set forth in the first and second parts of the first schedule hereto.

2. I object to produce the said documents set forth in the second part of the said first schedule hereto [*state grounds of objection*].

3. I have had, but have not now in my possession or power the documents relating to the matters in question in this suit set forth in the second schedule hereto.

4. The last-mentioned documents were last in my possession or power on [*state when, and what has become of them, and in whose possession they now are*].

5. According to the best of my knowledge, information, and belief, I have not now, and never had in my possession, custody, or power, or in the possession, custody, or power of my solicitors or agents, solicitor or agent, or in the possession, custody, or power of any other person or persons on my behalf, any deed, account, book of account, voucher, receipt, letter, memorandum, paper, or writing, or any copy of or extract from any such document, or any other document whatsoever, relating to the matters in question in this suit, or any of them, or wherein any entry has been made relative to such matters or any of them, other than and except the documents set forth in the said first and second schedules hereto.

(Signed)

Sworn, &c.



APP. B.  
PT. II.  
Nos. 9, 10, 11.

## No. 9.

Notice to Produce Documents (O. 31, r. 15).

[*Heading as in Form 1.*]

Take notice that the [*plaintiff or defendant*] requires you to produce for his inspection, the following documents referred to in your [*statement of claim, or defence, or affidavit*], dated the day of \_\_\_\_\_, 19\_\_\_\_, namely \_\_\_\_\_.

Dated, &c.

(Signed)

Solicitor for the \_\_\_\_\_.

To M. Z.,

Solicitor for the \_\_\_\_\_.

## No. 10.

Notice to Inspect Documents (O. 31, r. 16).

[*Heading as in Form 1.*]

Take notice that you can inspect the documents mentioned in your notice of the \_\_\_\_\_ day of \_\_\_\_\_, [except the deed numbered \_\_\_\_\_ in that notice] at my office on \_\_\_\_\_ next, the \_\_\_\_\_ inst., between the hours of \_\_\_\_\_.

Or, that the [*plaintiff or defendant*] objects to giving you inspection of the documents mentioned in your notice of the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, on the ground that [*state the ground*].

(Signed, &c.)

## No. 11.

Notice to Admit Documents (O. 32, r. 3).

[*Heading as in Form 1.*]

Take notice that the \_\_\_\_\_ in this cause proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the \_\_\_\_\_ h solicitor or agent at \_\_\_\_\_ on \_\_\_\_\_, between the hours of \_\_\_\_\_; and the \_\_\_\_\_ is hereby required, within forty-eight hours from the last-mentioned hour, to admit that such of the said documents as are

specified to be originals were respectively written, signed, or executed, as they purport respectively to have been; that such as are specified as copies are true copies; and such documents as are stated to have been served, sent, or delivered, were so served, sent, or delivered, respectively; saving all just exceptions to the admissibility of all such documents as evidence in this cause.

APP. B.  
Pt. II.  
No. II.

Dated, &c.

(Signed) G. H., solicitor for  
plaintiff [*or* defendant.]

To E. F., solicitor for defendant [*or* plaintiff].

[*Here describe the documents, the manner of doing which may be as follows*]:—

---

ORIGINALS.

---

Description of Documents.	Dates.
Deed of covenant between A. B. and C. D. first part, and E. F. second part - - -	January 1, 18 .
Indenture of lease from A. B. to C. D. -	February 1, 18 .
Indenture of release between A. B., and C. D., first part, etc. - - - - -	February 2, 18 .
Letter — defendant to plaintiff - - - -	March 1, 18 .
Policy of insurance on goods by ship "Isabella," on voyage from St. John to Liverpool. - - - - -	December 3, 19 .
Bill of exchange for \$100 at three months, drawn by A. B. on and accepted by C. D., indorsed by E. F. and G. H. - -	May 1, 19 .

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App. B.  
Pt. II.  
Nos. 11, 12.

## COPIES.

Description of Document.	Dates.	Original or Duplicate served, sent, or delivered, when, how, and by whom.
Register of Baptism of A. B. in the parish of X. - - -	January 1, 1848	
Letter — plaintiff to defendant. - -	February 1, 18	Sent by mail, February 2, 18 .
Notice to produce papers. - - -	March 1, 19	Served March 2, 19 , on defendant's solicitor, by E. F. of—
Record of a Judgment of the Supreme Court in an action F. S. v F. N. - -	April 22, 1898.	
Grant under the great seal of New Brunswick. - - -	January 2, 1849	

## No. 12.

Notice to Admit Facts (O. 32, r. 5).

[*Heading as in Form 1.*]

Take notice that the plaintiff [*or defendant*] in this cause requires the defendant [*or plaintiff*] to admit, for the purposes of this cause only, the several facts respectively hereunder specified; and the defendant [*or plaintiff*] is hereby required, within six days from the service of this notice, to admit the said several facts, saving all just exceptions to the admissibility of such facts as evidence in this cause.

Dated, &c.

G. D., solicitor for the plaintiff [*or defendant*].

To E. F., solicitor for the defendant [*or plaintiff*].

The facts, the admission of which is required, are—

1. That John Smith died on the 1st of January, 1890.

App. B.  
Pt. II.  
No. 13.

2. That he died intestate.
3. That James Smith was his only lawful son.
4. That Julius Smith died on the 1st of April, 1896.
5. That Julius Smith never was married.

---

No. 13.

Admission of Facts, pursuant to Notice (O. 32, r. 5).

[*Heading as in Form 1.*]

The defendant [*or plaintiff*] in this cause, for the purposes of this cause only, hereby admits the several facts respectively hereunder specified, subject to the qualifications or limitations, if any, hereunder specified, saving all just exceptions to the admissibility of any such facts, or any of them, as evidence in this cause.

Provided that this admission is made for the purposes of this action only, and is not an admission to be used against the defendant [*or plaintiff*] on any other occasion, or by any one other than the plaintiff [*or defendant, or party requiring the admission*].

Delivered, &c.

E. F., solicitor for the defendant [*or plaintiff*].

To G. H., solicitor [*or agent*] for the plaintiff [*or defendant*].

Facts Admitted.	Qualifications or Limitations, if any, subject to which they are admitted.
1. That John Smith died on the 1st of January, 1870.	1.
2. That he died intestate.	2.
3. That James Smith was his lawful son.	3. But not that he was his only lawful son.
4. That Julius Smith died.	4. But not that he died on the 1st of April, 1876.
5. That Julius Smith never was married.	5.

App. B.  
Pt. II.  
Nos. 14, 15, 16.

## No. 14.

Notice to Produce (General Form) (O. 32, r. 8).

[*Heading as in Form 1.*]

Take notice, that you are hereby required to produce and show to the Court on the trial of this            all books, papers, letters, copies of letters, and other writings and documents in your custody, possession, or power, containing any entry, memorandum, or minute relating to the matters in question in this            , and particularly            .

Dated the            day of            , 19            .

(Signed)

To, &c.

---

 No. 15.

Issue (O. 34, r. 11).

[*Heading as in Form 1.*]

Whereas A. B. affirms, and C. D. denies [*here state the question or questions of fact to be tried*], and it has been ordered by the Hon. Mr. Justice            that the said question shall be tried (*here state mode of trial, whether with or without a jury*); therefore let the same be tried accordingly.

---

 No. 16.

Notice of Trial (O. 35, r. 4).

[*Heading as in Form 1.*]

Take notice of trial of this            [*or of the issues in this ordered to be tried*] [*or as the case may be*] in [*or as the case may be*], for the            day of            next.

Dated, &c.

X.Y., plaintiff's solicitor [*or as the case may be*].

To M. Z., defendant's solicitor [*or as the case may be*].

## No. 17.

Certificate of Officer after trial with a Jury (O. 35, r. 24).

App. B.  
Pt. II.  
Nos. 17, 17a, 18.*[Heading as in Form 1.]*

I certify that this                      was tried before the Honorable  
Mr. Justice                      , with a special jury of the county of                      ,  
on the 12th and 13th days of November, 19                      .

The jury found [*state findings*].

The Judge directed that judgment should be entered for the  
plaintiff for \$                      , with costs [*as the case may be*].

The                      day of                      , 19                      .

A. B., [*Title of officer.*]

## No. 17A.

Notice of Trial without Pleadings (O. 18A., r. 2).

*[Heading as in Form 1.]*

Take notice of trial of this cause without pleadings in [*or  
as the case may be*] for the                      day of                      next.

Dated, &c.

X. Y., plaintiff's solicitor [*or as the case may be*].

To M. Z., defendant's solicitor [*or as the case may be*].

## No. 18.

Notice of Discontinuance (O. 28, r. 1).

*[Heading as in Form 1.]*

Take notice, that the plaintiff hereby [*wholly discontinues  
this action, or withdraws so much of his claim in this action  
as relates to, etc., and if not against all the defendants add, as  
against the defendants, etc.*]

Dated, &c.

(Signed, &c.)

To, &c.

App. B.  
Pt. II.  
Nos. 19, 20.

## No. 19.

Notice of Cross-examination of deponents at Trial (O. 37, r. 20).

[*Heading as in Form 1.*]

Take notice, that the                      intend at the trial of this action, to cross-examine the several deponents named and described in the schedule hereto on their affidavits therein specified.

And also take notice that you are hereby required to produce the said deponents for such cross-examination before the Court aforesaid.

Dated the              day of              19      .

(Signed)

Solicitor for the              .

To, &c.

The Schedule above referred to:

Name of Deponent.	Address and Description.	Date when Affidavit Delivered

## No. 20.

Notice of Renewal of Writ of Execution (O. 41, r. 17).

[*Heading as in Form 1.*]

Take notice, that the writ of execution issued in this action directed to the Sheriff of              , and bearing date the day of              , 19      , is hereby renewed for two years from the              day of              , 19      .

Dated the              day of              19      .

(Signed, &c.)

To the Sheriff of              .

## No. 21.

App. B.  
Pt. II.  
Nos. 21, 22.

## Affidavit under Order XIV., r. 1.

[*Heading as in Form 1.*]

I, \_\_\_\_\_, of \_\_\_\_\_, [the above-named plaintiff, or solicitor for the above-named plaintiff, or as may be] make oath and say as follows:—

1. The defendant, \_\_\_\_\_, is justly and truly indebted to [me] in the sum of \$ \_\_\_\_\_ for \_\_\_\_\_ and was so indebted at the commencement of this action.

The particulars of the said claim appear by the indorsement on the writ of summons in this action, a true copy of which writ and indorsement thereon is hereto annexed marked A.

2. That the defendant has appeared in said action.

3. I verily believe that there is no defence to this action.

Sworn, &c.

## No. 22.

## Affidavit of Service of Summons under Order XIV. (O. 73, r. 2).

[*Heading as in Form 1.*]

I [*name, address, and occupation of deponent*], of \_\_\_\_\_, solicitor for the above-named plaintiff \_\_\_\_\_, make oath and say as follows:—

1. I did on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before the hour of six [one, *if served on Saturday*] in the afternoon serve [*if defendant appeared in person, say, the above-named defendant, who appeared in person*], with a true copy of the summons hereto annexed marked A by leaving said copy at [address for service] with \_\_\_\_\_ [*a person resident at or belonging to the address for service.*]

2. I did also at the same time leave with the said \_\_\_\_\_ a true copy of the affidavit of \_\_\_\_\_ [*if any exhibits, say, and exhibits therein referred to*] to be used in support of such summons.

Sworn, &c.



App. B.  
Pt. II.  
Nos. 22, 24.

## No. 23.

Affidavit of Service of Summons (O. 61, r. 7; O. 73, r. 2).

[*Heading as in Form 1.*]

I , of , solicitor for the above-named , make oath and say as follows:—

I did on the day of , 19 , before the hour of six in the afternoon, serve , solicitor for the above-named in this action with a true copy of the summons hereto annexed marked A., by leaving it [or by posting it at the post office at in a duly registered envelope addressed to the said ] at the of the said situated , being the address for service in this action, [with clerk in the employ of the said , or as may be there].

Sworn, &c.

## No. 24.

Affidavit on Interpleader (O. 59, r. 2).

[*Heading as in Form 1.*]

I, , of , the defendant in the above action, make oath and say as follows:

1. The writ of summons herein was issued on the day of , 19 , and was served on me on the day of , 19 .

2. The action is brought to recover . The said \* in my possession, but I claim no interest therein.

3. The right to the said subject-matter of this action has been and is claimed † by one who ‡ .

4. I do not in any manner collude with the said , or with the above-named plaintiff, but I am ready to bring into Court or to pay or dispose of the said in such manner as the Court may order or direct.

Sworn, &c.

\* "is" or "are." † If claim in writing make the writing an exhibit. ‡ State expectation of suit, or that he has already sued.

## No. 25.

APP. B.  
PT. II.  
Nos. 25, 26.

**Notice of Claim to Goods taken in Execution (O. 59, r. 16).**

Take notice that A. B. has claimed the goods or [certain goods] [*where only certain goods are claimed here enumerate them*] taken in execution by the Sheriff of \_\_\_\_\_, under the warrant of execution issued in this action. You are hereby required to admit or dispute the title of the said A. B. to the said goods, and give notice thereof in writing to the said Sheriff within four days from the receipt of this notice, failing which the said Sheriff may issue an interpleader summons. If you admit the title of the said A. B. to the said goods and give notice thereof in manner aforesaid to the said Sheriff you will only be liable for any fees and expenses incurred prior to the receipt of the notice admitting the claim.

Dated, &amp;c.

(Signed)

To the plaintiff.

Sheriff of \_\_\_\_\_ .

## No. 26.

**Notice of Plaintiff of Admission or Dispute of Title of Claimant (O. 59, r. 16).**

Take notice that I admit [*or, dispute*] the title of A. B. to the goods [*or, to certain of the goods, namely (set them out)*] seized by you under the execution issued under the judgment in this action.

(Signed) Plaintiff  
or  
Solicitor.

To the Sheriff of \_\_\_\_\_ .

App. C.  
Sec. I.

## APPENDIX C.

### FORMS OF STATEMENTS OF CLAIM TO BE USED PURSUANT TO ORDER XIX., RULE 4.

#### Section I.

In the Supreme Court of Judicature.

Writ issued the            day of            , 19 .

Between A. B., Plaintiff,  
and  
C. D., Defendant.

#### *Statement of Claim.*

The plaintiff, &c.  
[or]

The plaintiff's claim is, &c.  
[To be filled up in manner exemplified in the following  
Forms].

The plaintiff claims [as in following Forms].

(Signed)

Delivered the            day of            , 19 .

App. C.  
Sec. II.  
No. I.

#### Section II.

#### Actions of an Equitable Nature.

##### No. 1.

#### *Administration.*

The plaintiff is a creditor of X. Y., deceased, of whom the defendant C. D., is executor [or administrator] and the defendant E. F., is heir at law [or devisee].

#### Particulars of the claim :

Principal due on the bond of the testator [or			
intestate] dated the	day of	, 19 .	\$2,000 00
Interest from the	of	at 5 per cent.	250 00
			<hr/>
			\$2,250 00

The plaintiff claims to be paid the amount due to him or to have the real and personal estate of the said X. Y., administered.

**APP. C.  
SEC. II.  
Nos. 2, 3.**

(Signed)

Delivered

---

No. 2.

*Wilful Default.*

1. The plaintiff is residuary legatee of A. B., of the City of Saint John, who died on March 3rd, 19 , having made his will dated March 2nd, 19 , and appointed the defendants his executors, who proved his will April 6th, 19 .

2. The defendants have been guilty of wilful default in not getting in certain property of the testator.

3. The wilful default on which the plaintiff relies is as follows:

- C. D. owed to the testator \$1,000, in respect of which no interest had been paid or acknowledgment given for five years before testator's death. The defendants were aware of this fact, but never applied to C. D. for payment until more than a year after testator's death, whereby the said sum was lost.

The plaintiff claims:—

- (1.) Account of testator's personal estate on footing of wilful default.
- (2.) Administration of testator's personal estate.

(Signed)

Delivered

---

No. 3.

*Dissolution of Partnership.*

1. The plaintiff on December 20th, 1895, entered into partnership articles with the defendant for 10 years.

APP. C.  
Sec. II.  
Nos. 4, 5.

2. The defendant has broken the partnership articles as follows:—

- a.
- b.
- c.

The plaintiff claims:—

- 1. Dissolution.
- 2. Accounts and inquiries.
- 3. A receiver and manager.

(Signed)

Delivered

No. 4.

*For Accounts.*

- 1. The plaintiffs are executors of A., deceased.
- 2. From the year 1895 till his death A. employed the defendant as his confidential agent in the management of a large building estate at X.
- 3. The defendant as such agent received large sums of money for the said A., for which he refuses to account.

The plaintiffs claim:—

- 1. Accounts of all sums received and paid by the defendant as agent of A.
- 2. Payment of the amount found due.

(Signed)

Delivered

No. 5.

*Foreclosure or Sale.*

- 1. The plaintiff is mortgagee of lands belonging to the defendant.
- 2. The following are the particulars of the mortgage:—
  - (a) [Date and names of mortgagor and mortgagee.]
  - (b) [Sum secured.]

(c) [*Rate of interest.*]

(d) [*Property subject to mortgage.*]

(e) [*Amount now due.*]

App. C.  
Sec. II.  
Nos. 5, 6.

[*If the plaintiff's title is a derivative title, state shortly the assignments under which he claims.*]

[*If the plaintiff is mortgagee in possession, add :*]

3. The plaintiff took possession of the mortgaged property on the \_\_\_\_\_ of \_\_\_\_\_, and is ready to account as mortgagee in possession from that time.

The plaintiff claims payment, or, in default, sale, or foreclosure (and possession.)

---

No. 6.

*Redemption.*

1. The plaintiff is mortgagor of lands of which the defendant is mortgagee.

2. The following are the particulars of the mortgage:—

(a) [*Date.*]

(b) [*Sum secured.*]

(c) [*Rate of interest.*]

(d) [*Property subject to mortgage.*]

[*If the plaintiff's title is derivative, state shortly the deeds under which he claims.*]

[*If the defendant is mortgagee in possession, add :*]

3. The defendant has taken possession [or has received the rents] of the mortgaged property.

The plaintiff claims to redeem the said premises, and to have the same reconveyed to him [and to have possession thereof].

(Signed)

Delivered .

App. C.  
Sec. II.  
Nos. 7, 8.

## No. 7.

*For Raising Portions or other Charges on Land.*

1. By a settlement on the marriage of A. B. and C. B., dated January 10, 1870, Whiteacre was demised to trustees for 1,000 years on trust after the death of A. B. and C. B. to raise \$5,000 for the younger children of the marriage who should attain 21.

2. A. B. died February 15, 1890.

3. C. B. died June 10, 1895.

4. There were five children only of the marriage of A. B. and C. B., all of whom are now living and have attained 21. The plaintiff is the second born child.

5. The defendants were on April 5, 1897, appointed trustees of the settlement.

The plaintiff claims :

1. To have \$5,000 raised by sale or mortgage and distributed among the persons entitled.

(Signed)

Delivered . \_\_\_\_\_

## No. 8.

*Sale and Distribution of Proceeds of Property subject to any Lien or charge.*

1. On November 12, 1898, A. and the defendant B. deposited with the plaintiff 500 Dominion Government bonds as security for a debt of \$1,000 and interest at 4 per cent. due from A. and the defendant B. to the plaintiff.

2. A. died March 12, 19 .

3. On March 30, 19 , administration of the estate of A. was granted to the defendant C.

4. \$800 and \$30 for interest is owing to the plaintiff on the security of the said bonds.

The plaintiff claims :

App. C.  
Sec. II,  
No. 9.

1. Sale of the said bonds.
2. Application of the proceeds in payment of his debt.
3. Distribution of the surplus among the parties entitled.

(Signed)

Delivered .

No. 9.

*Breach of Trust.*

1. By a settlement dated July 3, 1882, on the marriage of the plaintiffs' father and mother, of which the defendant A. B. and one C. D. were trustees, the plaintiffs are absolutely entitled on the deaths of their father and mother.

2. On August 5, 1884, C. D. died, and the defendant E. F. was appointed in his place.

3. On December 1, 1889, the plaintiffs' father died.

4. On January 1, 1890, the plaintiffs' mother died.

5. The defendants have committed the following breaches of trust by :

- (a) Sale of \$3,000 Bank Stock and investment of the proceeds in the business of the defendant A. B.
- (b) Sale of leasehold property worth \$5,000 to G. H. for \$1,000 [without taking any proper steps to ascertain its value or to obtain such value].

The plaintiffs claim :

- (1) The replacement of \$3,000 Bank Stock and 5 per cent. interest on the proceeds of the Bank Stock sold from the date of sale till replacement.
- (2) Payment of \$4,000 and interest at 5 per cent. per annum from the date of the sale.

(Signed)

Delivered .



App. C.  
Sec. II.  
Nos. 10, 11.

## No. 10.

*Execution of Trust.*

1. By a settlement dated June 10, 1876, upon trust for A. B. and C. B. successively for life, with remainder for their children who should attain 21, the following property was assured :—

- (a) A sum of \$5,735 consolidated 3 per cent. annuities.
- (b) \$4,000 invested on mortgage of land at X.
- (c) One-fifth of the residuary estate of D. deceased, subject to a prior life interest.

2. On August 15, 1882, C. B. died.

3. On February 18, 1895, A. B. died.

4. On September 10, 1899, D. died.

5. A. B. and C. B. had five children only, of whom the plaintiff is one.

6. The defendants are the present trustees of the settlement.

The plaintiff claims :

- 1. Execution of the trusts of the settlement.
- 2. All necessary accounts and inquiries.
- 3. A receiver.

Delivered . (Signed)

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No. 11.

*For Rectification, &c., of Instruments.*

1. In 1885 a marriage was arranged between A. B. and the plaintiff.

2. By an agreement contained in two letters, dated February 10 and 12, 1885, it was agreed between C. B., the father of A. B., and D., the father of the plaintiff, that each should settle \$10,000 on trust for A. B. and the plaintiff successively

**App. C.**  
**Sec. II.**  
**Nos. 11, 12.**

*Partition or Sale of Land.*

1. By will, dated January 5, 1864, A. devised Whiteacre to B., C., and D. as tenants in common.
2. On March 10, 1865, A. died.
3. On March 20, 1865, A.'s will was proved.
4. On June 25, 1867, B. conveyed to the plaintiff his share of Whiteacre.
5. On July 30, 1869, C. conveyed his share to the defendants on trust for sale.
6. By will, dated November 5, 1872, D. devised his share among his children equally.
7. On December 2, 1872, D. died.
8. On December 15, 1872, D.'s will was proved.
9. There were 10 children of D. living at his decease, some of whom have since died.
- [10. Whiteacre consists of a mansion, house and grounds.
11. A sale of the property and a division of the proceeds will be more beneficial than a division of the property].

The plaintiff claims:

A division of Whiteacre among the parties interested.

[or a sale of Whiteacre and distribution of the proceeds among the parties interested].

Delivered

(Signed)

Section III. [*Special Indorsements*].

App. C.  
Sec. III.  
Nos. 1, 2.

**Actions Included in Order 2, Rule 5, Classes A. B. C. D. E. and F.**

No. 1.

*Goods Sold and Delivered.*

The plaintiff's claim is for the price of goods sold and delivered.

Particulars :—

1905—31st December—

Balance of account for butcher's meat to this date . . . . .	\$135.00
1906—1st February to 31st March—	
Butcher's meat . . . . .	74.50
	<hr/>
Cr.	\$209.50
1906—1st February.—By Cash . . . . .	45.00
	<hr/>
Balance due . . . . .	<u>\$164.50</u>

No. 2.

*Money Had and Received.*

The plaintiff's claim is for money received by the defendant for the use of the plaintiff.

Particulars :—

1902.—1st January.—

To amount of rents of No. 5, Smith Street, collected by the defendant . . . . .	\$200.00
To deposit on intended sale of Eva Villa . . . . .	100.00
	<hr/>
Amount due . . . . .	<u>\$300.00</u>

(Signed)

App. C.  
Sec. III.  
Nos. 3, 4, 5.

## No. 3.

*Payee Against Maker of a Promissory Note.*

The plaintiff's claim is against the defendant, as maker of a promissory note for \$250, dated 1st January, 1905, payable to \_\_\_\_\_, or order, four months after date.

## Particulars :—

Principal	.	.	.	.	\$250.00
Interest	.	.	.	.	10.00
Amount due	.	.	.	.	<u>\$260.00</u>

(Signed)

## No. 4.

*Indorsee against Acceptor of a Bill of Exchange.*

The plaintiff's claim is against the defendant, as acceptor of a bill of exchange for \$400, dated 1st January, 1904, drawn by A. B., payable three months after date to the order of E. F., and indorsed to the plaintiff.

## Particulars :—

Principal due	.	.	.	\$400.00
Interest	.	.	.	16.00
Amount due	.	.	.	<u>\$416.00</u>

(Signed)

## No. 5.

*Indorsee Against Acceptor and Drawer of Bill of Exchange Severally.*

The plaintiff's claim is against the defendant A. B., as acceptor, and against the defendant C. D., as drawer, of a bill of exchange for \$500, dated 1st January, 1904, payable three months after date, and indorsed by the defendant C. D., to the

plaintiff, of the dishonor of which on presentation the defendant C. D., had notice.

APP. C.  
SEC. III.  
Nos. 6, 7.

Particulars :—

Principal	.	.	.	.	\$500.00
Interest	.	.	.	.	20.00
Amount due	.	.	.	.	<u>\$520.00</u>

(Signed)

No. 6.

*Payee against Drawer of a Bill of Exchange excusing  
Notice of Dishonor.*

The plaintiff's claim is against the defendant as drawer of a bill of exchange for \$600 dated 1st March, 1903, drawn upon A. B., payable to plaintiff three months after date, which was duly presented for payment and dishonored, but A. B. had no effects of the defendant, nor was there any consideration for the payment of the said bill by the said A. B.

Particulars (as in Form 4).

(Signed)

No. 7.

*Obligee against Obligor of a Money Bond.*

The plaintiff's claim is for principal and interest due upon the defendant's bond to the plaintiff, dated 1st January, 1906, conditioned for payment of \$50 on the 26th April, 1906.

Particulars :—

Principal	.	.	.	.	.	\$50.00
Interest	.	.	.	.	.	2.00
Amount due	.	.	.	.	.	<u>\$52.00</u>

(Signed)

APP. C.  
SEC. III.  
Nos. 8, 9.

No. 8.

*Covenantee against Covenantor on a Covenant to pay Money.*

The plaintiff's claim is for principal and interest due under a covenant in a deed dated the 1st of January, 1899.

Particulars :—

Principal . . . . .	\$100.00
Paid . . . . .	20.00
Principal due . . . . .	80.00
Interest . . . . .	3.00
Amount due . . . . .	<u>\$ 83.00</u>

(Signed)

\_\_\_\_\_

No. 9.

*On a Guarantee for the price of Goods, setting out the Guarantee.*

The plaintiff's claim is for the price of goods sold and delivered by the plaintiff to E. F., under the following guarantee :—

*2nd February, 1906.*

SIR,—In consideration of your supplying goods to E. F., I undertake to see you paid.

Yours, &c.,

To Mr. A. B. (plaintiff).

C. D. (defendant).

Particulars :—

1906.

25 March, 55 tons of coal at \$6 . . .	\$330.00
Amount due . . . . .	<u>\$330.00</u>

(Signed)

## No. 10.

App. C.  
Sec. III.  
Nos. 10, 11, 12.

*Creditor against Principal Debtor and his Surety Severally  
on a Guarantee for Goods Sold.*

The plaintiff's claim is against the defendant A. B. as principal, and against the defendant C. D. as surety, for the price of goods sold and delivered by the plaintiff to A. B. on the guarantee by C. D., dated the 2nd of February, 1904.

Particulars :—

1904, 2nd February — Goods . . .	\$47.15
3rd March — Goods . . .	105.14
17th March — Goods . . .	14.12
5th April — Goods . . .	34.00
Amount due . . . . .	<u>\$200.41</u>

(Signed)

## No. 11.

*Debt Upon a Trust.*

The plaintiff's claim is against the defendants as trustees under the settlement upon the marriage of A. B. and X. Y., dated January 1st, 1890, whereby \$10,000 invested on mortgage of land at Z. was vested in the defendants as trustees upon trust to pay the income thereof half-yearly to the plaintiff.

Particulars :—

1905, December 25th, half a year's income, \$250.00

## No. 12.

*Landlord against Tenant whose Term has Expired or has  
been determined by Notice to Quit.*

See Sect. VI., Form No. 1.



App. C.  
Sec. IV.  
Nos. 1, 2.

## SECTION IV.

Actions for Damages for Breach of Contract or Duty arising out of Contract.

## No. 1.

*Buyer against seller of goods for not delivering.*

1. The plaintiff has suffered damage by breach of contract for sale and delivery by the defendant to the plaintiff of 100 tons pig iron at \$22 per ton to be delivered on rail at Moncton on the 15th of March, 1906.

2. The defendant did not deliver any (or            tons, as the case may be) of the said iron.

## Particulars of damage:—

Loss of profit at \$4 per ton on 100 tons . . \$400.00  
The plaintiff claims \$400.00.

Delivered . . . . . (Signed)

## No. 2

*Buyer against Seller of Goods for delivering them inferior to Contract.*

1. The plaintiff has suffered damage by breach of a contract between the plaintiff and the defendant for sale and delivery of 100 sacks of flour known as seconds at \$7 per sack.

2. Eighty sacks delivered were inferior to seconds, and 20 sacks were not delivered.

## Particulars of damage:—

80 sacks at \$1.00, . . . . .	\$80.00
20 sacks at 0.25, . . . . .	5.00
	<hr/>
	\$85.00
	<hr/>

The plaintiff claims \$85.00.

Delivered . . . . . (Signed)

## No. 3.

App. C.  
Sec. IV.  
Nos. 3, 4, 5.

*Shipowner against Charterer for Detention beyond the demurrage days.*

1. The plaintiff has suffered damage by breach of a charter-party, dated the 10th of March, 1904, between the plaintiff and the defendant of the ship *Mary*.

2. The ship was detained at the port of loading.

Particulars of damage:—

1905. Jan. 1	}	10 days' detention beyond the demurrage days, at \$100 per day, . . . \$1,000.00
to		
Jan. 10)		

The plaintiff claims \$1,000.

(Signed)

Delivered . \_\_\_\_\_

## No. 4.

*Shipper against Master on a Bill of Lading for Damage to Goods.*

1. The plaintiff has suffered damage by breach of contract by bill of lading of goods shipped by the plaintiff on board the *Jane* signed by defendant, dated the 1st of January, 1906,

2. Fifty bales of cotton were delivered in a damaged condition.

Particulars of damage:—

50 bales at \$10.00, . . . . . \$500.00

The plaintiff claims \$500.00.

(Signed)

Delivered . \_\_\_\_\_

## No. 5.

*Shipper Against Ship-owner on a Bill of Lading for Damage and Short Delivery.*

1. The plaintiff has suffered damage by breach of contract

**APP. C.  
Sec. IV.  
Nos. 5, 6.**

by bill of lading of goods shipped by the plaintiff signed by the master of the ship *Mary* as the defendant's agent, dated the 1st of January, 1905.

2. 500 barrels of flour were delivered in a damaged condition, and 100 barrels were not delivered.

Particulars of damage:—

500 barrels at 2.00	.	.	.	\$1000.00
100 barrels at 5.00	.	.	.	500.00
The plaintiff claims	.	.	.	<u>\$1500.00</u>

(Signed)

Delivered .

No. 6.

*On a Marine Policy Against Underwriter.*

The plaintiff was interested to the amount of \$      under a marine policy of insurance for that amount, dated the of      , 19      , on the ship *Hero*, subscribed by the defendant for \$      .

Particulars:—

1. Valued or open:—Valued at \$20,000.00.
2. Voyage:—At and from Cardiff to Valparaiso.
3. [*or*, Time:—From noon of 1st January, 1905, to noon of 1st January, 1906].
4. Premium to defendant:—\$      per cent.
5. Perils insured against causing loss:—Of the seas.
6. Loss:—Total [*or* exceeding 3 per cent].

The plaintiff claims \$      .

(Signed)

Delivered .

## No. 7.

App. C.  
Sec. IV.  
Nos. 7, 8.

*Passenger Against Railway Company for Negligence.*

The plaintiff has suffered damage from the defendant's negligence in carrying the plaintiff as a passenger by railway from Woodstock to McAdam, causing personal injuries to the plaintiff, in a collision near Canterbury Station on the 15th January, 1906.

Particulars of expenses, &c.

Loss of 15 weeks' salary as clerk at	
\$10.00 per week . . . . .	\$150.00
Dr. Wm. Smith . . . . .	50.00
Nurse for 6 weeks . . . . .	60.00
	<hr/>
	<u>\$260.00</u>

The plaintiff claims \$1,000.00.

(Signed)

Delivered

\_\_\_\_\_  
No. 8.

*Client against Solicitor for Negligence.*

1. The plaintiff has suffered damage from the defendant's negligence in his conduct for the plaintiff, as his solicitor, of business undertaken by the defendant on the plaintiff's retainer.

2. The negligence was in making an application under Order XIV., Rule I., in the case of A. B. (the plaintiff) v. C. D., where the case was one of unliquidated damages and not of debt.

Particulars of damage :—

Taxed costs paid to defendant on dismissal of summons  
\$

The plaintiff claims \$

(Signed)

Delivered

APP. C.  
SEC. IV.  
Nos. 9, 10.

## No. 9.

*Landlord against Tenant for Breach of Covenant to Repair.*

1. By a repairing covenant contained in a lease under seal from the plaintiff to the defendant, dated the 1st of January, 1899, of a house No. 401, King Street, St. John, for seven years from the 25th day of December, 1898, the defendant covenanted to keep the premises in such repair and condition as therein mentioned.

2. The premises were during the term out of such repair as was required by the covenant.

3. They were yielded up out of such repair at the expiration of the term.

4. Particulars of dilapidations were delivered to the defendant's solicitor on the \_\_\_\_\_ of \_\_\_\_\_, 19\_\_\_\_, and exceed three folios.

The plaintiff claims \$ \_\_\_\_\_.

(Signed)

Delivered \_\_\_\_\_

## No. 10.

*Breach of Promise of Marriage.*

1. The plaintiff has suffered damage by breach of promise by the defendant to marry her on the \_\_\_\_\_ of \_\_\_\_\_ [or, within a reasonable time, which elapsed before action] [or, on the death of A. B., which happened before action].

2. The defendant refused to marry the plaintiff on the \_\_\_\_\_ of \_\_\_\_\_ (or, within a reasonable time) (or, on the death of A. B.)

Particulars of special damage.  
[As the case may be, if any].

The plaintiff claims \$ \_\_\_\_\_.

(Signed)

Delivered \_\_\_\_\_

## Section V.

APP. C.  
SEC. V.  
Nos. 1, 2, 3.

ACTIONS CLAIMING INJUNCTIONS, DAMAGES, OR DECLARATIONS OF RIGHT FOUNDED  
ON WRONGS.

## No. 1.

*Conversion of Goods.*

The plaintiff has suffered damage by the defendant wrongfully depriving the plaintiff of two casks of oil by refusing to give them up on demand [or, throwing them overboard out of a boat in the West Side Docks, St. John, &c.

[If any special damage is claimed, add]—

Particulars [fill them in].

The plaintiff claims \$100.00.

(Signed)

Delivered

---

## No. 2.

*Detinue.*

The defendant detained from the plaintiff the plaintiff's goods and chattels, that is to say, a horse, harness, and buggy.

The plaintiff claims a return of the said goods and chattels or their value, and \$50.00 for their detention.

(Signed)

Delivered

---

## No. 3.

*Negligent Driving.*

The plaintiff has suffered damage from personal injuries to the plaintiff and damages to his carriage, caused by the defendant or his servant on the 15th of January, 1906, negligently driving a cart and horse in Queen street.

App. C.  
Sec. V.  
Nos. 4, 5.

## Particulars of expenses, &amp;c.

Charges of Mr. James Smith, surgeon,	\$50.00
Charges of Mr. Alfred Jones, coachmaker,	70.00
	<u>\$120.00</u>

The plaintiff claims \$750.00.

(Signed)

Delivered .

No. 4.

*Damages for Death caused by wrongful act.*

(C. 79, C. S. 1903.)

The plaintiff, as executor of C. D., deceased, brings this action for the benefit of Eva the wife, and William and Margaret and Dorothea, the children of C. D. (*as the case may be*), who have suffered damage from the defendant's negligence, in carrying the said C. D. by tram car, whereby the said C. D. was killed in Main Street, St. Stephen, on the 15th of January, 1906.

Particulars pursuant to Statute are delivered herewith.  
The plaintiff claims \$2,500.00.

(Signed)

Delivered .

No. 5.

*Collision of ships.*

The plaintiff has suffered damage from injuries to his ship, the *Betsy*, and the cargo on board thereof, by a collision with the ship, the *June*, caused by the negligent navigation thereof by the defendant or his servants in the harbor of St. John, on the 1st of February, 1905.

Particulars of loss and expenses:—

1. Charges of Jones & Co., shipwrights, \$2,100.00.
2. Loss of use of ship from 1st of February, 1905, to 1st of March, 1905, \$1,200.00.

Particulars of damage to cargo :—  
*(Insert them.)*

App. C.  
 Sec. V.  
 Nos. 6, 7.

The plaintiff claims \$ . . .  
 (Signed)  
 Delivered .

---

No. 6.

*Injunction, &c., for Infringement of Patent.*

The defendant has infringed the plaintiff's patent, No. 14,084, granted for the term of 14 years, from the the 21st of May, 1896, for certain improvements in the manufacture of iron and steel, whereof the plaintiff was the first inventor.

The plaintiff claims an injunction to restrain the defendant from further infringement and \$500.00 damages.

Particulars of breaches are delivered herewith.

(Signed)  
 Delivered .

---

No. 7.

*Damages for Infringement of Copyright.*

The defendant has infringed the plaintiff's copyright in a book entitled "The History of Canada," registered on the day of .

Particulars of special damage are as follows :—

Loss of sale of fifty copies . . .	\$250.00
Loss of profit in the copyright . .	250.00
	<hr/>
	<u>\$500.00</u>

The plaintiff claims \$500.00.

(Signed)  
 Delivered .



APP. C.  
SEC. V.  
NO. 8, 9.

## No. 8.

*Injunction, &c., for Infringement of Trade Mark.*

1. The defendant has infringed the plaintiff's trade mark.
2. The trade mark is [*describe it*].  
[*If the plaintiff is not the original proprietor of the trade mark, show shortly how his title is derived.*]

3. The following are the acts complained of, viz.:—  
[*Set them out.*]

The plaintiff claims an injunction to restrain the defendant, his servants, and agents, from infringing the plaintiff's said trade mark, and in particular from [*stating any particular injunction sought*].

The plaintiff also claims an account or damages.

(Signed)

Delivered .

## No. 9.

*Seduction.*

The plaintiff has suffered damage from the seduction and carnally knowing by the defendant of G. H. the [daughter and] servant of the plaintiff.

Particulars of special damage are as follows:—

Loss of service from the 1st of March	
to the 30th of November, 1905 .	\$500.00
Nursing and medical attendance, .	50 00
	<u>\$550.00</u>

The plaintiff claims \$550.00.

(Signed)

Delivered .

## No. 10.

App. C.  
Sec. V.  
Nos. 10, 11.

*Nuisance by Smells.*

The plaintiff has suffered damage from offensive and pestilential smells and vapours caused by the defendant in the plaintiff's dwelling house, No. 15 Main street, Sussex.

The plaintiff claims :—

- (1) \$250.00.
- (2) An injunction to restrain the defendant from the continuance or repetition of the said injury or the committal of any injury of a like kind in respect of the same property.

(Signed)

Delivered

## No. 11.

*Nuisance by Pollution of Water.*

1. The plaintiff is the owner [or lessee] and occupier of a farm known as \_\_\_\_\_, through which there runs a river known as \_\_\_\_\_.

2. The defendant or persons in his employ pollute the water in the said river by passing into the same the refuse of the defendant's dye-works, situate higher up the said river.

The plaintiff claims an injunction to restrain the defendant, his servants and agents, from sending from the said dye-works into the said river any matter so as to pollute the waters thereof, or to render them unwholesome or unfit for use, to the injury of the plaintiff [or, as the case may be].

The plaintiff will also claim damages in respect of the said nuisance.

(Signed)

Delivered

App. C.  
Sec. V.  
Nos. 12, 13.

## No. 12.

*Fraudulent Prospectus.*

1. On 31st January, 1905, the defendant issued a prospectus to the public relating to the A. B. Company, Limited.

2. On Feb. 1st, 1905, the plaintiff received a copy of this prospectus.

3. The plaintiff subscribed for 100 shares in the Company on the faith of this prospectus.

4. The prospectus contained misrepresentations, of which the following are particulars:—

- (a.) The prospectus stated "....." whereas in fact....
- (b.) The prospectus stated "....." whereas in fact....
- (c.) The prospectus stated "....." whereas in fact....

5. The defendant knew of the real facts as to the above particulars.

6. The following facts, which were within the knowledge of the defendants, are material and were not stated in the prospectus:

- (a.)
- (b.)

7. The plaintiff has paid calls to the Company to the extent of \$5,000.00.

The plaintiff claims:—

- 1. Repayment of \$5,000.00 and interest.
- 2. Indemnity.

(Signed)

Delivered

\_\_\_\_\_  
No. 13.

*Fraudulent Sale of a Lease.*

The plaintiff has suffered damage from the defendant inducing the plaintiff to buy the goodwill and lease of the

George Hotel, Chatham, by fraudulently representing to the plaintiff that the takings of the said public-house were \$100.00 a week, whereas in fact they were much less, to the defendant's knowledge.

APP. C.  
Sec. V.  
No. 14.

Particulars of special damage :—

[*Fill them in.*]

The plaintiff claims

(Signed)

Delivered

No. 14.

*Malicious Prosecution.*

The defendant maliciously and without reasonable and probable cause preferred a charge of larceny against the plaintiff before a stipendiary magistrate, causing the plaintiff to be sent for trial on the charge and imprisoned thereon, and prosecuted the plaintiff thereon at the Carleton County Court, Woodstock, where the plaintiff was acquitted.

Particulars of special damage :—

Messrs. L. and L.'s bill of costs, \$325.00.

Loss in business from January 1, 1906, to February 18, 1906, \$500.00.

The plaintiff claims \$825.00.

(Signed)

Delivered

SECTION VI.

Actions for Recovery of Land, &c.

APP. C.  
Sec. VI.  
No. 1.

No. 1.

*Landlord against Tenant whose term has Expired, &c.*

1. The plaintiff is entitled to the possession of a farm and premises called Church Farm, in the parish of Chipman in the county of Queen's, which was let by the plaintiff to the

APP. C.  
Sec. VI.  
No. 2.

defendant for the term of three years, from the 29th of September, , which term has expired [or as tenant from year to year from the 29th September, , which said tenancy was duty determined by notice to quit expiring on the 29th of September, or which term has become liable to forfeiture for non-payment of rent].

The plaintiff claims possession and \$750.00 for mesne profits.

(Signed)

Delivered .

No. 2.

*Heir-at-Law against Stranger.*

1. The plaintiff is entitled to the possession of Blackacre, in the parish of [or, of No. 2 Bridge Street, Campbellton], in the county of .

2. On and before the of , 19 , A. B. was seized in fee and in possession of the premises.

3. On the day of , 19 , the said A. B. died so seized, whereupon—

4. The estate descended to the plaintiff, his eldest son and heir-at-law.

After the death of the said A. B., the defendant wrongfully took possession of the premises,

The plaintiff claims:—

1. Possession of the premises.

2. Meane profits from the of ,

(Signed)

Delivered .

## APPENDIX D.

App. D.  
Sec. I.

FORMS OF DEFENCE TO BE USED PURSUANT TO  
ORDER XIX., RULE 4.

Section 1.

1. General Form.

In the Supreme Court of Judicature.

Between A. B., Plaintiff,  
and  
C. D., Defendant.

Defence.

The defendant says that :—

1.) [*To be filled up in the manner exemplified in the fol-*  
2.) *lowing Forms.*]  
3.)

(Signed)

Delivered

Counter-claim.

The defendant says that :—

1.) [*To be filled up in the manner exemplified in the fol-*  
2.) *lowing Forms.*]

The defendant counterclaims.

(Signed)

Delivered

Defence and Counter-claim.

Defence.

The defendant says :—

1.) [*To be filled up.*]  
2.)

App. D.  
Sec. I.

Counter-claim.

The defendant repeats paragraph 2 of his defence, and says that :—

3. } [To be filled up.]  
4. }

The defendant counterclaims.

(Signed)

Delivered

2. Form of Title where new Party brought in.

In the Supreme Court of Judicature.

Between A. B., Plaintiff,

and

C. D., Defendant.

(By original Action)

And between the said C. D., Plaintiff,

and

The said A. B. and E. F., Defendants

(By Counter-claim).

App. D.  
Sec. II.

Section II.

To Actions of an Equitable Nature. Appendix C, Sect. II.

*To Actions for Administration.*

1. The defendants do not admit the plaintiff's claim.

[or]

The defendant A. B. admits the plaintiff's claim, but not assets.

[or]

The defendant C. D. admits assets, but not the plaintiff's claim.

2. The claim is barred by the Statute of Limitations.

[State which.]

3. Payment was made by deceased.

4. The claim is fraudulent in the following particulars:

[Set out particulars.]

5. The defendant is entitled to a set-off, of which the following are the particulars:—

APP. B.  
Sec. II.

[Set out particulars.]

6. The claim was released by deed dated the        of        .

7. Notice was given and assets distributed under Statute, &c.\*

Particulars of the Notice.

Advertisements in the *Royal Gazette* of January 3, 1906.

“                      *New York Herald*, February, 1906.

“                      *Montreal Gazette* of January 25, 1906.

[Giving the titles of the newspapers and the dates of those in which the advertisement appeared.]

8. The personal estate of the testator is sufficient to pay the plaintiff his debt if established.

9. The defendant is not heir-at-law or devisee of the deceased.

(Signed)

Delivered

No. 1.

*To Actions for Foreclosure by Mortgagee.*

1. The defendant did not execute the mortgage.

2. The mortgage was not assigned to the plaintiff (*if more than one assignment is alleged, say which is denied*).

3. The debt is barred by the Statute of Limitations.

4. Payments have been made, viz:—

10 July, 1894, \$1,000.

18 October, 1895, \$500.

5. The plaintiff took possession on the        of        , and has received the rents ever since.

6. The plaintiff released the debt by deed, dated 1 June, 1899.

7. The defendant conveyed all his interest to A. B. by deed, dated 5 November, 1897.

\*No such statutory enactment as yet in this Province.



App. B.  
Sec. II.

The defendant claims :—

1. Account.
2. Re-conveyance.

(Signed)

Delivered

\_\_\_\_\_  
No. 2.

*To same by alleged second incumbrancer, who claims priority.*

1. {
2. {
3. {
4. { *[As in preceding Form.]*
5. {
6. {

7. By a deed registered, [etc.], dated 1st June, 1880, the mortgagor A. B. mortgaged the property in question to the defendant to secure \$5,000 and interest at 5 per cent. per annum.

The defendant claims :—

1. A declaration of priority and foreclosure (and a receiver).

(Signed)

Delivered

*[If the plaintiff claims payment of the mortgage debt, the defendant must, if he disputes his liability, show the grounds on which he does so as in other cases of debt; or he can claim indemnity against the owner of the Equity, of Redemption under Order XVI., Rule 35].*

\_\_\_\_\_  
No. 3.

*To Actions for Redemption.*

1. The plaintiff's right to redeem is barred by the Statute of Limitations.
2. The plaintiff assigned all interest in the property to A. B.
3. The defendant by deed registered, [etc.], dated the day of \_\_\_\_\_ assigned all his interest in the mortgage debt and property comprised in the mortgage to A. B.

4. The defendant never took possession of the mortgaged property, or received the rents thereof.

APP. D.  
Sec. II.

*[If the defendant admits possession for a time only, he should state the time, and deny possession beyond what he admits].*

(Signed).

Delivered

No. 4.

*To Actions for Specific Performance.*

1. The defendant did not enter into the agreement.
2. A. B. was not the agent of the defendant *[if alleged by plaintiff]*.
3. The plaintiff has not performed the following conditions—*[Conditions]*.
4. The defendants did not—*[Alleged acts of part performance]*.
5. The plaintiff's title to the property agreed to be sold is not such as the defendant is bound to accept by reason of the following matters:—*[State why]*.
6. The Statute of Frauds has not been complied with.
7. The agreement is uncertain in the following respects:—*[State them]*.
8. *[or]* The defendant has been guilty of delay;
9. *[or]* The defendant has been guilty of fraud *[or, misrepresentation]*;
10. *[or]* The agreement is unfair;
11. *[or]* The agreement was entered into by mistake.

The following are particulars of (8), (9), (10), (11) *[or as the case may be]*.

**App. D.  
Sec. II.**

12. The agreement was rescinded under Conditions of Sale No. 11, [or by mutual agreement].

(Signed)

Delivered

*[In cases where damages are claimed and the defendant disputes his liability to damages, he must deny the agreement or the alleged breaches, or show whatever other ground of defence he intends to rely on, e.g., Statute of Limitations, accord and satisfaction, release, fraud, &c.]*

**App. D.  
Sec. III.**

### Section III.

To Actions included in O. 2, r. 5, Classes A, B, C, D, E, and F.

*To Actions on Bills of Exchange, Promissory Notes or Checks.*

1. The defendant did not accept the bill.
2. The defendant did not make the note.
3. The defendant did not draw the check.
4. The defendant did not indorse to A. B.
5. The defendant [or, A. B.] did not indorse to the plaintiff.
6. The bill was not presented for payment.
7. The defendant had not due notice of dishonor.
8. The plaintiff was not the holder at the commencement of the action.
9. The bill was accepted [or, the note was made] for the accommodation of the defendant without consideration.
10. The bill was accepted for the accommodation of the drawer and indorsed to the plaintiff without consideration.
11. The bill was accepted and delivered to the drawer without consideration for the purpose of his getting it discounted for the defendant, and the drawer, in fraud of the defendant, and contrary to the said purpose, indorsed the bill to the plaintiff without consideration [or, with notice of the said fraud, or, overdue].

12. The defendant was induced to accept by the fraud of the drawer, who indorsed to the plaintiff without consideration [or, with notice of the fraud, or, overdue].

App. B.  
Sec. III.

Particulars of the fraud are as follows:—The drawer, on or about the 15th of May, 1905, falsely and fraudulently stated to the defendant that he had shipped twenty tons of pig iron for the defendant on board the *Ajux*, which he had not done.

13. The defendant accepted the bill [or, made the note] for and on account of the price of fifty tons of coal to be delivered by the plaintiff to the defendant by the 1st of May, 1905, and the plaintiff failed to deliver the goods.

14. The bill [or, note, or check] was rendered void after issue by a material alteration, viz., by the alteration of the date from the 21st of January to the 2nd of January.

(Signed)

Delivered

*To Actions for any Simple Contract Debts other than Bills, Notes or Checks.*

1. The defendant did not order the goods.
2. The goods were not delivered to the defendant.
3. The price was not \$

[or]

4. } Except as to \$ , same as { 1.  
5. }  
6. } 2.  
3.

7. The defendant [or, A. B., the defendant's agent] satisfied the claim by payment before action to the plaintiff [or, to C. D., the plaintiff's agent] on the of , 19 .

8. The defendant satisfied the claim by payment after action to the plaintiff on the day of , 19 .

(Signed)

Delivered

**APP. D.  
SEC. III.**

*To Actions on Bonds or Contracts under Seal for the Payment of a Liquidated Amount in Money.*

1. The bond [*or, deed*] is not the defendant's bond [*or, deed*].
2. The defendant made payment to the plaintiff on the day according to the condition of the bond.
3. The defendant made payment to the plaintiff, after the day named and before action, of the principal and interest mentioned in the bond.

(Signed)

Delivered .

*In Actions on Guarantees, Whether Under Seal or Not, Where the Claim Against the Principal is in Respect of a debt or liquidated demand only (Order II., Rule 5, Class (D)).*

1. The principal satisfied the claim by payment before action.
2. The defendant was released by the plaintiff giving time to the principal debtor, in pursuance of a binding agreement.

(Signed)

Delivered .

*To any Action of Debt.*

1. As to \$200 parcel of the money claimed, the defendant is entitled to set off for goods sold and delivered by the defendant to the plaintiff.

Particulars are as follows:—

1906 Jan. 25. To 20 tons of coal at \$4 . \$ 80.00.  
 “ Feb. 1. To 30 tons of coal at \$4 . 120.00.

Total . . .	\$200.00
-------------	----------

2. As to the whole, [*or, as to \$* , parcel of the money claimed,] the defendant made tender before action [*or, on the day on which it fell due*] of \$ , and has paid the same into Court.

(Signed)

Delivered .

*General Defences.*

APP. D.  
SEC. III.

1. On 5th April, 1905, a brown horse was delivered by the defendant to and accepted by the plaintiff in discharge of the alleged cause of action;

[or, on 5th April, 1905, an agreement between the plaintiff and the defendant, whereby it was agreed between the plaintiff and the defendant that the defendant should deliver the cargo of the *Mary* at the West Side Docks, St. John, N. B., instead of at the Government Pier, as per charter-party of 1st March, 1905, was accepted in discharge of the alleged cause of action].

2. The defendant was covert at the time of making the alleged contract [or, contracting the alleged debt].

3. The defendant was an infant at the time of making the alleged contract [or, contracting the alleged debt].

4. The defendant as to the whole action [or, as to the sum of \$ , parcel of the money claimed, or, as to the plaintiff's claim on the guarantee of the of , 19 , or as the case may be], has paid into Court \$ , and says that sum is enough to satisfy the plaintiff's claim, [or, the plaintiff's claim herein pleaded to].

5. The causes of action were released by deed dated the 1st of May, 1905, between the plaintiff of the first part and the defendant of the second part.

6. The contract was rescinded [or, the defendant was exonerated by the plaintiff] before breach. Particulars are as follows:—An arrangement between the plaintiff and the defendant, made verbally on the 15th of April, 1905, [or, by letter from the defendant to the plaintiff, and answer of the plaintiff dated the 14th and 15th of April, 1905].

App. D.  
Sec. III.

7. The debt was barred by the Statute of Limitations [*state which*].

8. [4th] section of the Statute of Frauds has not been complied with.

(Signed)

Delivered

App. D.  
Sec. IV.

## Section IV.

To Actions for Damages for Breach of Contract or Duty. Appendix C.. Sect. IV.

1. The defendant did not contract [*or, promise, or, agree*] as alleged.

2. The defendant did not receive the goods for the alleged purpose [*or, on the alleged terms*].

3. The defendant did not receive the plaintiff as a passenger to be carried as alleged.

4. The defendant did not [*insert breaches denied*].

5. The defendant was not ready and willing to accept and pay for the goods [*or, to deliver the goods, or, as the case may be*].

6. There was contributory negligence on the part of the plaintiff.

7. The plaintiff did not pay or tender the money for the carriage.

8. The damage or loss occurred from the inherent vice [*or, bad condition when received*] of the goods [*or, horse, or, as the case may be*].

9. The loss occurred by reason of the excepted perils mentioned in the charter-party [*or, bill of lading*], that is to say, the perils of the seas, [*or, fire, or, as the case may be*].

APP. D.  
SEC. IV.

10. The charter-party was cancelled pursuant to cancelling clause therein, the ship not having arrived at port of loading on or before 1st February, 1906.

11. The alleged liability of the defendant had ceased by reason of cesser clause in the charter-party, the cargo shipped having been worth more at the port of discharge than the freight or demurrage.

12. The loss was not by the perils insured against.

13. The plaintiff was not interested in the subject-matter of the insurance.

14. The ship was not seaworthy at commencement of risk [*or, voyage*].

15. The plaintiff was not ready and willing to marry the defendant.

(Signed)

Delivered \_\_\_\_\_

Section V.

APP. D.  
SEC. V.

To Actions claiming Injunctions, Damages, or Declarations of Right, founded upon Wrongs. Appendix C., Sect. V.

*To all Actions for Wrongs.*

1. Denial of the several acts [*or, matters*] complained of.

(Signed)

Delivered \_\_\_\_\_

*To Actions for Detention or Conversion of Chattels.*

1. The goods [*or, chattels, or, as the case may be*] were not the plaintiff's.

2. The goods were detained for a lien to which the defendant was entitled. Particulars are as follows :—



APP. D.  
SEC. V.

19 , May 3. To carriage of the goods claimed from St. John to Woodstock :—

45 tons at 50c. . . . . \$22.50

(Signed)

Delivered . . . . .

*To Actions for personal bodily injuries to Carriages, Goods, or Animals by Trespass or negligence.*

1. The defendant did the acts complained of in necessary self-defence.

2. There was contributory negligence on the part of the plaintiff [or, the plaintiff's servant].

(Signed)

Delivered . . . . .

*To Actions for infringement of a patent.*

1. The defendant did not infringe the patent.

2. The invention was not new.

3. The plaintiff was not the first or true inventor.

4. The invention was not useful.

5. Denial of any other matter of fact affecting the validity of the patent.

6. The patent was not assigned to the plaintiff.

(Signed)

Delivered . . . . .

*Copyright.*

1. The plaintiff is not the author [assignee, &c., as the case may be].

2. The book was not registered.

3. The defendant did not infringe.

(Signed)

Delivered . . . . .

*Trade Mark.*APP. D.  
SEC. V.

- (1). The trade mark is not the plaintiff's.
- (2). The alleged trade mark is not a trade mark
- (3). The defendant did not infringe.

(Signed)

Delivered

*Nuisance.*

1. The defendant denies that he or his servants pollute the water [or do what is complained of].

*(If the defendant claims the right by prescription or otherwise to do what is complained of, he must say so, and must state the grounds of his claim, i.e., whether, by prescription, grant, or what.)*

2. The plaintiff has been guilty of laches, of which the following are particulars:—

1870. Plaintiff's mill began to work.

1871. Plaintiff came into possession.

1883. First complaint.

3. As to the plaintiff's claim for damages, the defendant will rely on the above grounds of defence, and says that the acts complained of have not produced any damage to the plaintiff. *[If other grounds are relied on, they must be stated—e.g., the Statute of Limitations as to past damage.]*

(Signed)

Delivered

*Seduction.*

1. The said A. B. was not the servant of the plaintiff.
2. The defendant did not seduce and carnally know the said A. B.

(Signed)

Delivered

**APP. D.  
Sec. VI.**

## Section VI.

To Actions for Recovery of Land Appendix C., Section VI.

1. The defendant is in possession of the premises by himself or his tenant.

2. The defendant had no notice to quit.

(Signed)

Delivered

**APP. D.  
Sec. VII.**

## Section VII.

## Counter-Claims.

The defendant lent \$500.00 to the plaintiff on 1st May, 1902.  
The defendant counterclaims \$500.00.

1. The defendant has suffered damage by the plaintiff's breach of a contract for the sale and delivery by the plaintiff to the defendant of 5,000 tons of steam coal at \$4.00 per ton f. o. b. at Minto by equal monthly deliveries over the first five months of 1906.

2. The April and May instalments were not delivered.

Particulars of the damages:—

Difference between market price in April and	
May, and the contract price, 50 cents per ton	
on 2,000 tons . . . . .	\$1,000

The defendant counterclaims \$1,000.

(Signed)

Delivered

## APPENDIX E.

FORMS OF REPLY, &c., TO BE USED PURSUANT TO  
ORDER XIX., RULE 4.

## Section I.

*General Form.*

In the Supreme Court of Judicature.

Between A. B., Plaintiff,

and

C. D., Defendant.

Reply.

The plaintiff as to the defence says that —

- 1.
- 2.

The plaintiff as to the counter-claim says that —

- 1.
- 2.

(Signed)

Delivered

Reply.

*To Actions on a Guarantee to which Defence raised of time  
given to the Principal and Counter-claims for  
Non-Delivery of Goods.*

The plaintiff as to the defence says that —

1. He joins issue.
2. The agreement giving time to the principal expressly reserved remedies against the surety.

The plaintiff as to the counter-claim says that —

1. The defendant was not ready and willing to accept and pay for the goods.

(Signed)

Delivered

## Section II.

## Example of a Statement of Claim, Defence, and Reply.

In the Supreme Court of Judicature.

Between A. B., Plaintiff,  
and  
C. D., Defendant.

## Statement of Claim.

The plaintiff's claim is for work done and materials provided by the plaintiff for the defendant at his request.

## Particulars:—

1905, January 1 to 31 May.—To rebuilding house at St. Stephen, as per contract, dated the 24th December, 1904,	\$3,400 00
To extras as per account delivered	243 00
	<hr/> 3,643 00
Paid on account,	3,000 00
	<hr/>
Balance due	<u>\$ 643 00</u>

The plaintiff also seeks to recover interest on the above balance from the 31st May, 1905, till payment or judgment.

(Signed)

Delivered

[Heading as in General Form.]

## Defence and Counter-claim.

## Defence.

The defendant says that—

1. Except as to \$200.00, parcel of the money claimed, the architect did not grant his certificate pursuant to the contract.
2. As to \$200, parcel of the money claimed, the defendant brings [or has brought] into Court \$200, and says that sum is enough to satisfy the plaintiff's claim herein pleaded to.

## Counter-claim.

App. E.  
Sec. II.

The defendant says that—

1. The contract contained a clause whereby it was provided that the plaintiff should complete the works by the 31st of March, 1904, or in default pay to the defendant \$4 a day for every subsequent day during which the works should remain unfinished, and they so remained unfinished for sixty-one days to the 31st of May.

The defendant counter claims \$244.00.

(Signed)

Delivered

[*Heading as in General Form.*]

Reply.

The plaintiff says that—

1. As to the first paragraph of the defence, he joins issue
2. As to the second paragraph thereof, the plaintiff accepts the \$200.00 in satisfaction.

The plaintiff as to the counter-claim says that—

3. The liquidated damages were waived by ordering extras and material alterations in the works.

4. The defendant waived the liquidated damages by preventing the plaintiff from having access to the premises till a week after the agreed time.

(Signed)

Delivered

## Section III.

Defence, Including an Objection in Point of Law (O 25, r. 2).

## No. 1.

[*Heading.*]

Defence.

*To Action on a Guarantee for the Price of Goods.*

The defendant says that:—

1. The goods were not supplied to E. F., on the guarantee.
2. The defendant will object that the guarantee discloses a past consideration on the face of it.

(Signed)

Delivered

## No. 2.

[*Heading.*]

Defence.

*To Action for Slander actionable only by Reason of Special Damage.*

The defendant says that:—

1. The defendant did not speak or publish the words.
2. The words did not refer to the plaintiff.
3. The defendant will object that the special damage stated is not sufficient in point of law to sustain the action.

(Signed)

Delivered

No. 3.

APP. E.  
SEC. III.

[*Heading.*]

Defence.

*To Action on a Marine Policy Stated to Contain Clauses  
that the Policy was to be Proof of Interest and  
Without Benefit of Salvage.*

The defendant says that—

1. The defendant did not make the policy.
2. The loss was not by the perils insured against.
3. The defendant will object that the policy was avoided by  
19 Geo. II. c. 37, s. 1.

(Signed)

Delivered



## APPENDIX F.

### FORMS OF JUDGMENT, ETC.

#### No. 1.

**Default of Appearance and Defence in Case of Liquidated Demand**  
 (O 13, r. 3; O. 27, rr. 2, 3; O. 40, r. 2).

In the Supreme Court of Judicature.

Between A. B., Plaintiff,  
 and

C. D. and E. F., Defendants.

24th February, 1906.

The defendants [*or, the defendant C. D.*] not having appeared to the writ of summons herein [*or, not having delivered any defence*], it is this day adjudged that the plaintiff recover against the said defendant \$            and costs, to be taxed.

For Land (O. 13, r. 8; O. 27, r. 7).

[*Heading as in Form 1.*]

The            day of            19            .

*No appearance having been entered [or, no statement of defence having been delivered] herein it is this day adjudged that the plaintiff recover possession of the land in the writ of summons [or, Statement of Claim] herein mentioned and described as (describe the property).*

#### No. 2.

**Judgment in Default against a Married Woman, alone or with Others.**

[*Heading as in Form 1.*]

The defendant            , not having appeared to the writ of summons herein [*or not having delivered any defence*] it is this day adjudged that the plaintiff recover against the defendant \$            , and costs [if fixed costs, insert

amount, if taxed, insert *to be taxed*] *such sum and costs so far as regards the defendant [name of married woman] to be payable out of her separate property as hereinafter mentioned and not otherwise.*

**APP. F.**  
**Nos. 3, 4.**

*Ante-Nuptial Debt.*

[If for ante-nuptial debts the form should be as follows:—]

*Adjudged (as above) such sum and costs to be payable out of her separate property whether subject to any restriction against anticipation or not, and not otherwise, and execution hereon is limited to such separate property.*

---

No. 3.

Interlocutory Judgment in Default of Appearance or Defence where Demand unliquidated (O. 13, r. 5.)

[Heading as in Form 1.]

The        day of        , 19        .

No appearance having been entered to the writ of summons [or, no defence having been delivered by the defendant] herein,

It is this day adjudged that the plaintiff recover against the defendant the value of the goods [or damages, or both as the case may be] to be assessed.

---

No. 4.

Judgment in Default of Appearance in Action for Recovery of Land  
(see O. 13, r. 8).

[Heading as in Form 1.]

30th November, 19        .

No appearance having been entered to the writ of summons herein, it is this day adjudged that the plaintiff recover possession of the land in the indorsement on the writ described as

APP. F.  
Nos. 5, 6, 7.

## No. 5.

Judgment in Default of Appearance and Defence after Assessment of Damages (see O. 13, r. 5).

*[Heading as in Form 1.]*

30th November, 19 .

The plaintiff having on the      day of      , 19 , obtained interlocutory judgment herein against the defendant in default of [appearance or defence], and a writ of inquiry, dated      , 19 , having been issued directed to the Sheriff of      to assess the damages which the plaintiff was entitled to recover, and the said sheriff having by his return dated the      19 , returned that said damages have been assessed at \$      , it is adjudged that the plaintiff recover \$      and costs, to be taxed.

## No. 6.

Final Judgment after Assessment of Damages by an Official Referee.  
(O. 35, rr. 26, 27).

*[Heading as in Form 1.]*

The plaintiff having on the      day of      , 19 , obtained interlocutory judgment herein against the defendant in default of [appearance or defence] for damages to be assessed, and      having on the      day of      , 19 , ordered that the said damages be assessed by an official referee of the Supreme Court of Judicature, and      , Esq., official referee, having found and assessed the said damages at \$      , as appears by his certificate dated the      ; therefore it is adjudged that the plaintiff recover against the defendant \$      , and costs to be taxed.

## No. 7.

Judgment after Appearance and Order under O 14, r. 1.

*[Heading as in Form 1.]*

The      day of      , 19 .

The defendant having appeared to the writ of summons herein, and the plaintiff having by the order of      , dated

the       day of       , 19   , obtained leave to sign judgment under the Rules of the Supreme Court of Judicature, Order XIV., Rule 1, for [*recite order.*]

APP. F.  
Nos. 8, 9.

It is this day adjudged that the plaintiff recover against the defendant \$       [*or, possession of the land in the indorsement on the writ described as       ] and costs to be taxed.*

The above costs have been taxed and allowed at \$       .

---

No. 8.

Judgment at Trial by Judge without a Jury (O. 39).

[*Heading as in Form 1.*]

This action coming on for trial [the       day of       and] this day before       in the presence of counsel for the plaintiff and the defendants [*or, if some of the defendants do not appear, for the plaintiff and the defendant C. D., no one appearing for the defendants E. F. and G. H., although they were duly served with notice of trial as by the affidavit of       filed the       day of       appears,*] upon hearing the probate of the will of       , the answers of the defendants C. D., E. F., and G. H. to interrogatories, the admission in writing, dated       and signed by [Mr.       , the solicitor for] the plaintiff A. B. and by [Mr.       , the solicitor for] the defendant C. D., the affidavit of       , dated the       day of       , the affidavit of       , dated       day of       , the evidence of       , taken on their oral examination at the trial, and an exhibit marked X, being an indenture dated, &c., and made between [parties], and what was alleged by counsel on both sides: This Court doth declare, &c.

And this Court doth order and adjudge, &c.

No. 9.

Judgment after Trial with a Jury (O. 40).

[*Heading as in Form 1.*]

15th November, 19   .

The action having on the 12th and 13th November, 19   , been tried before the Honorable Mr. Justice       , with a special jury of the county of       , and the jury having

App. F.  
Nos. 10, 11.

found [*state findings as in officer's certificate*], and the said Mr. Justice , having ordered that judgment be entered for the plaintiff for \$ and costs, [*or, as the case may be*]; Therefore it is adjudged that the plaintiff recover against the defendant \$ , and \$ for his costs [*or, that the plaintiff recover nothing against the defendant, and that the defendant recover against the plaintiff \$ for his costs of defence, or, as the case may be.*]

---

No. 10.

Judgment upon Motion for Judgment (O. 39).

[*Heading as in Form 1.*]

30th November, 19 .

This day, before Mr. X. of counsel for the plaintiff [*or as the case may be*], moved on behalf of the said [*state judgment moved for*], and the said Mr. X. having been heard of counsel for and Mr. Y. of counsel for , the Court adjudged

---

No. 11.

Judgment after Trial by Court without Jury (O. 35, r. 21 ..

[*Heading as in Form 1.*]

Dated and entered the day of , 19 .

This action having on the day of , 19 . been tried before , and the said on the day of , 19 , having ordered that judgment be entered for the for \$ .

It is this day adjudged that the recover from the \$ and costs to be taxed.

The above costs have been taxed and allowed at \$ .

No. 12.

APP. F.  
Nov. 12, 13, 14.

Judgment of Dismissal (O. 35, r. 13).

[Heading as in Form 1.]

Dated and entered the       day of       , 19       .

This action having on the       day of       19       , been called on for hearing before       , and the plaintiff having failed to appear, and the defendant having thereupon become entitled       under Order XXXV., Rule 13, to judgment dismissing the action, and the said       having ordered that judgment be entered accordingly.

Therefore it is adjudged that this action do stand dismissed out of this Court with costs.

And it is further adjudged that the defendant recover against the plaintiff his costs to be taxed.

The above costs have been taxed, &c.

No. 13.

Judgment for Defendant's Costs on Discontinuance (O. 26, r. 3).

[Heading as in Form 1.]

The       day of       , 19       .

The plaintiff having by a notice in writing dated the day of       , 19       , wholly discontinued this action [or, withdrawn his claim in this action for, or, withdrawn so much of his claim in this action as relates to, or as the case may be].

It is this day adjudged that the defendant recover against the plaintiff costs to be taxed.

The above costs have been taxed and allowed at \$       .

No. 14.

Judgment for Plaintiff's Costs after Confession of Defence (see O. 21, r. 3).

[Heading as in Form 1.]

The       day of       , 19       .

The defendant in his statement of defence herein having alleged a ground of defence which arose after the commencement

of this action, and the plaintiff having on the                  day of  
                   , 19     , delivered a confession of that defence ;

The above costs have been taxed and allowed at \$ .

**Judgment for Costs after Acceptance of Money paid into Court (O. 22 r. 7)**

**The                      day                      , 19     .**

It is this day adjudged that the plaintiff recover against the defendant costs to be taxed.

The above costs have been taxed and allowed at \$ .

**Judgment where no Judgment entered at Trial by Jury (O. 39).**

Dated and entered the                      day of                      , 19   .

Now on motion before the Court for judgment on behalf of the \_\_\_\_\_, the Court having \_\_\_\_\_.

It is this day adjudged that the                      recover against the  
the sum of \$                      , and costs to be taxed.

The above costs have been taxed and allowed at \$ .

## No. 17.

App. F.  
Nos. 17, 18.

Judgment on Motion after Trial of Issue (O. 39, r. 5).

*[Heading as in Form 1.]**Dated and entered the       day of       , 19       .*

The issues or questions of fact arising in this action [or cause or matter] by the order dated the       day of       ordered to be tried before       having on the       day of       been tried before       and the       having found;

Now on motion before the Court for judgment on behalf of the       , the Court having

It is this day adjudged that the       recover against the the sum of \$       and costs to be taxed.

The above costs have been taxed and allowed at \$       .

## No. 18.

Satisfaction Piece (O. 40, r. 12).

*[Heading as in Form 1.]*

Satisfaction is acknowledged of the judgment against the above-named defendant in this action entered on the day of       , A. D., 19       . And I do hereby nominate and appoint       as my solicitor to witness and attest my execution of this acknowledgment of satisfaction.

(Signature) *The above-named plaintiff.*

Signed by the said       in the presence of me       of       , a practicing solicitor of the Supreme Court of Judicature for New Brunswick. And I hereby declare myself to be solicitor for and on behalf of said       expressly named by       and attending at       request to inform       of the nature and effect of this acknowledgment of satisfaction (which I       accordingly did before the same was signed by me) and I also declare that I subscribe my name hereto as such solicitor.

(Signature)



APP. E.  
Nos. 19, 20.

## No. 19.

Memorial of Judgment (O. 44, r. 1 ; O. 52, r. 29).

[Heading as in Form 1.]

This is to certify that by a judgment of this Court bearing date the            day of            , in the year one thousand nine hundred and            , it was ordered that the said defendant should be absolutely barred and foreclosed from all right and equity of redemption in and to the following described lands [*describe the lands as set forth in the statement of claim, or, as the case may be*] being the land mentioned in the plaintiff's statement of claim [*or, as the case may be*].

Given under my hand and the seal of the said Court, this  
day of            , A. D. 19    .

## No. 20.

Judgment on Award—Order of Reference by consent.

[Heading as in Form 1.]

The            day of            .

The action having by an order of            dated the            day of            , been referred to the award of            with all the powers as to certifying and amending of a Judge of the Supreme Court of Judicature, the said order directing that the costs of the cause abide the event, and the costs of the reference and award be in the discretion of the arbitrator [*as in order*], and that the successful party be at liberty            days after service of a copy of the award on the other party's solicitor or agent, to sign final judgment for any sum found due by the award, and for all costs under the order and award, and for costs of judgment [*as in order*]. And the said arbitrator having by his award herein dated the            day of            found in favor of the            for the sum of \$            , and directed that [*directions as to costs, etc., as in award*].

Therefore it is this day adjudged that the            recover against the            \$            and costs to be taxed.

The above costs have been taxed, etc., [*as in Form 1*].

## APPENDIX G.

APP. G.  
Nos. 1, 2, 3.

## PART I.

## FORMS OF PRÆCIPE (O. 71, r. 1).

## No. 1.

## Of Fieri Facias (O. 42).

In the Supreme Court of Judicature.

Between A. B., Plaintiff,

and

C. D. and others, Defendants.

Seal a writ of *feri facias* directed to the Sheriff of ,  
 against C. D. of , in the county of , upon  
 a judgment (or order) dated the day of for  
 the sum of \$ debt, and \$ costs and interest, &c.

Indorsed to levy \$ and interest thereon at 5 per  
 centum per annum from the (date) and costs of execution,

X. Y., solicitor for [party on whose  
*behalf writ is to issue*].

## No. 2.

## Of Writ of Sequestration (O. 42).

[Heading as in No. 1.]

Seal of a writ of sequestration against C. D. for not  
 at the suit of A. B. directed to [names of commis-  
*sioners*].

Order dated day of , 19 .

## No. 3.

## Of Writ of Possession (O. 45).

[Heading as in No. 1.]

Seal a writ of possession directed to the Sheriff of , to  
 deliver possession to A. B. of

Judgment dated day of , 19 .

App. G.  
Nos. 4, 5, 6.

## No. 4.

Of Possession and Fi. Fa. combined.

[Heading as in No. 1.]

Seal a writ of possession and *fi. fa.* combined, directed to the Sheriff of \_\_\_\_\_ to deliver possession to the (1) \_\_\_\_\_ of the land and premises in the (2) \_\_\_\_\_ herein mentioned.

And also to levy against \_\_\_\_\_, of \_\_\_\_\_, in the county of \_\_\_\_\_, the sum of (3) \_\_\_\_\_, and interest at the rate of 5 per centum per annum on the said amount, from the day of \_\_\_\_\_ (4) \_\_\_\_\_

(5) \_\_\_\_\_, dated the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

(Signed)

Solicitor for the

- (1) "Plaintiff", or as may be.
- (2) "Judgment" or "order." If for part only of premises say "described as."
- (3) "\$ \_\_\_\_\_ debt, and \$ \_\_\_\_\_ costs," or as may be.
- (4) If part paid, add "indorsed to levy \$ \_\_\_\_\_ and interest from," &c., as indorsed on writ.
- (5) "Judgment" or "order."

## No. 5.

Of Writ of Delivery (O. 46).

[Heading as in No. 1.]

Seal a writ of delivery directed to the Sheriff of \_\_\_\_\_ to make delivery to A. B. of \_\_\_\_\_.

## No. 6.

Of Writ of Attachment (O. 43).

[Heading as in No. 1.]

Seal in pursuance of order dated \_\_\_\_\_ day of \_\_\_\_\_, an attachment directed to the Sheriff of \_\_\_\_\_, against C. D., for not delivering to A. B. \_\_\_\_\_.

No. 7.

APP. G.  
Nos. 7, 8, 9, 10

Of Inquiry (O. 13, r. 5).

[*Heading as in No. 1.*]

Seal a writ of inquiry directed to the Sheriff of \_\_\_\_\_ to  
assess the damages in this action.

Judgment dated \_\_\_\_\_.

Dated, &c. \_\_\_\_\_

No. 8.

Of Habeas Corpus ad Testificandum.

[*Heading as in No. 1.*]

Seal in pursuance of order dated \_\_\_\_\_, a writ of *habeas*  
*corpus ad testificandum* directed to the \_\_\_\_\_, to bring  
before \_\_\_\_\_.

Dated, &c. \_\_\_\_\_

No. 9.

Of Commission to Examine Witnesses (O. 36, r. 9).

[*Heading as in No. 1.*]

Seal in pursuance of order dated \_\_\_\_\_, a writ in the  
nature of a mandamus or commission to examine witnesses  
directed to \_\_\_\_\_.

Dated, &c. \_\_\_\_\_

No. 10.

Of Certiorari.

[*Heading as in No. 1.*]

Seal in pursuance of order of Mr. Justice \_\_\_\_\_, dated  
\_\_\_\_\_, a writ of certiorari directed to \_\_\_\_\_.

Dated, &c. \_\_\_\_\_

APP. C.  
Nos. 11, 12, 13,  
14.

## No. 11.

Of Amended Summons (O. 29, r. 1).

[Heading as in No. 1.]

Amend in pursuance of order [or fiat] dated \_\_\_\_\_, the  
writ of summons in this action by\*  
Dated, &c.

\*Set out amendments when required.

## No. 12.

Of Venditioni Exponas.

[Heading as in No. 1.]

Seal a writ of *venditioni exponas* directed to the Sheriff  
of \_\_\_\_\_, to sell the lands of C. D. taken under a writ of  
*fieri facias* in this action issued the \_\_\_\_\_ day of \_\_\_\_\_  
Dated, &c.

## No. 13.

Of Subpœna (O. 36, r. 2s).

[Heading as in No. 1.]

Seal writ of subpoena \_\_\_\_\_, on behalf of the \_\_\_\_\_ directed  
to \_\_\_\_\_  
Dated, &c.

## No. 14.

Entry of Action for Trial (O. 35, r. 9).

[Heading as in No. 1.]

Enter [or set down] this action for trial at the sittings of  
the Court at \_\_\_\_\_, commencing on \_\_\_\_\_  
Dated, &c.

FORMS OF PRÆCIPES.

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No. 15.

APP. C.  
Nos. 15, 16, 17,  
18.

Entry of Appeal (O. 67, r. 8).

[Heading as in No. 1.]

Enter this appeal from the order [or judgment] of  
in this action, dated the       day of       , 19       .  
Dated, &c.

No. 16.

Entry for Argument Generally.

[Heading as in No. 1.]

Set down for argument the  
Dated, &c.

No. 17.

Entry of Special Case (O. 34, r. 5.)

[Heading as in No. 1.]

Set down for argument the special case filed in this action  
on the       day of       , 19       .  
Dated, &c.

No. 18.

Memorandum of Service of Notice of Judgment (O. 16, r. 29.)

[Heading as in No. 1.]

Enter memorandum of service of notice of judgment made  
in this action, and dated the       day of       , 19       , on the  
under-mentioned persons, viz.:—

Name of Party Served.	Date of Service.

Dated, &c.

App. G.  
Nos. 19, 20, 21,  
22.

No. 19.

Certificate of Entry of Memorandum (O. 16, r. 28).

[*Heading as in No. 1.*]

These are to certify that a memorandum of service of notice of the [judgment *or* order] made in this action, dated the day of \_\_\_\_\_, 19\_\_\_\_, upon the undermentioned persons, viz., \_\_\_\_\_, was duly entered on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

No. 20.

Certificate of the State of the Cause (O. 13, r. 12; O. 71, r. 8).

[*Heading as in No. 1.*]

This is to certify that the plaintiff filed affidavit of service of the writ of summons in this action on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_. That no appearance has been entered for the defendant.

Dated, &c. \_\_\_\_\_

(Signature)

Registrar.

No. 21.

Search (O. 71, r. 9).

[*Heading as in No. 1.*]

Required a search for \_\_\_\_\_.

Dated, &c. \_\_\_\_\_

No. 22.

Memorandum on Notice of Judgment (O. 16, r. 30).

Take notice that from the time of the service of this notice you [or *as the case may be*, the infant *or* person of unsound mind] will be bound by the proceedings in the above cause in the same manner as if you [or the said infant *or* person of unsound mind] had been originally made a party, and that you [or the said infant *or* person of unsound mind] may, on entering an appearance, attend the proceedings under the within-mentioned judgment [or order] and that you [or the said infant *or* person of unsound mind] may within one month after the service of this notice apply to the Court to add to the judgment [or order].

## APPENDIX H.

## FORMS OF WRITS. [O. 41, r. 11].

App. H.  
c. 1.

## No. 1.

Writ of Fieri Facias (O. 42, r. 1).

In the Supreme Court of Judicature.

Between A. B., Plaintiff,  
and  
C. D., Defendant.

EDWARD THE SEVENTH, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, &c.

To the Sheriff of . . . , greeting. [*This writ must be so moulded as to follow the substance of the order or judgment.*]

We command you that of the goods and chattels, lands and tenements of C. D. in your bailiwick you cause to be made the sum of \$ . . . and also interest thereon at the rate of . . . per centum per annum from the . . . [*day of the judgment or order, or day from which money directed to be paid, or day from which interest is directed by order to run, or as the case may be*] day of . . . , which said sum of money and interest were lately before us in\* our Supreme Court of Judicature in a certain [action or matter there depending, intituled "In the matter of," etc., or as the case may be] wherein A. B. is plaintiff and C. D. defendant, by a judgment [or order] of our said Court bearing date the . . . day of . . . , adjudged [or awarded or ordered] to be paid by the said C. D. to A. B., together with certain costs in the said judgment [or order] mentioned, and which costs have been taxed and allowed at the sum of \$ . . .

And that of the goods and chattels, lands and tenements of the said C. D. in your bailiwick you further cause to be made the said sum of \$ . . . [costs] together with interest thereon at the rate of 5 per centum per annum from the . . . day of . . . [*day of judgment or order, or day from which money directed to be paid, or day from which interest is directed by the order to run, as the case may be*], and that you have that money and interest before us in\* our said Court immediately after the execution

\* "the trial division of," or as the case may be.



APP. B.  
Nov. 1, 2.

hereof to be paid to the said A. B. in pursuance of the said judgment [or order]. And in what manner you shall have executed this our writ make appear to us in\* our said Court immediately after the execution thereof. And have there then this writ.

Witness \_\_\_\_\_, Chief Justice, the \_\_\_\_\_ day of \_\_\_\_\_, in the year of Our Lord one thousand nine hundred and \_\_\_\_\_.

#### ENDORSEMENT ON THE WRIT.

Levy on the within, the whole being \$ \_\_\_\_\_ and \$ \_\_\_\_\_ for costs of execution, etc., and also interest on \$ \_\_\_\_\_ at 5 per centum per annum from the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, until payment, besides sheriff's poundage, fees, costs of levying, and all other legal incidental expenses.

This writ was issued by \_\_\_\_\_, solicitor for the \_\_\_\_\_ who resides at \_\_\_\_\_.

#### No. 2.

#### Writ of Fieri Facias against a Married Woman.

[Heading as in No. 1.]

EDWARD THE SEVENTH, by the Grace of God, &c.

*We command you that of the goods and chattels, etc., of A. B. (being her separate property in your bailiwick, you cause to be made the sum of \$ \_\_\_\_\_, and \$ \_\_\_\_\_ costs, and also interest thereon at the rate of \_\_\_\_\_ per centum per annum from the [date of judgment] which said sums of money and interest were lately before us in our Supreme Court of Judicature in a certain action [or matter] there depending wherein [parties' names] by a judgment of our said Court bearing date the \_\_\_\_\_, adjudged to be paid by the said A. B. to \_\_\_\_\_ out of her separate property [follow the terms of the judgment or order].*

Witness, &c.

\* "the trial division of," or as the case may be.

No. 3.

APP. H.  
NEW. 2, 4.

Fieri Facias on Order for Costs (O. 41, r. 15)

[Heading as in No. 1].

EDWARD THE SEVENTH, by the Grace of God, &c.

To the Sheriff of \_\_\_\_\_, greeting:

We command you that of the goods and chattels, etc., of \_\_\_\_\_ in your bailiwick, you cause to be made the sum of \$ \_\_\_\_\_ for certain costs which by an order of our Supreme Court of Judicature dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, were ordered to be paid by the said \_\_\_\_\_ to \_\_\_\_\_, and which have been taxed and allowed at the said sum, and interest on the said sum at the rate of 5 per centum per annum from the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and that you have the said sum and interest before us in our said Court,\* immediately after the execution hereof, to be rendered to the said \_\_\_\_\_. And in what manner, &c. And have you there then this writ.

Witness, &c.

Levy, &c. \_\_\_\_\_

No. 4.

Writ of Possession and Fi. Fa.

[Heading as in No. 1.]

EDWARD THE SEVENTH, by the Grace of God, &c.

To the Sheriff of \_\_\_\_\_, greeting: Whereas lately in our Supreme Court of Judicature by a (1) \_\_\_\_\_ of the [trial] division of the same Court, it was (2) \_\_\_\_\_ that the (3) \_\_\_\_\_ recover possession of all that (4) \_\_\_\_\_ with the appurtenances in your bailiwick: Therefore we command you that you omit not by reason of any liberty of your county, but that you enter the same, and without delay you cause the said \_\_\_\_\_, to have possession of the said land and premises with the appurtenances. And we further command you that of the goods and chattels of the said \_\_\_\_\_ in your bailiwick, you cause to be made the sum of \$ \_\_\_\_\_ and also interest thereon at the rate of 5 per centum per annum, from the \_\_\_\_\_ day of \_\_\_\_\_, which said sum of money and interest were in the said action by the (5) \_\_\_\_\_ to be

\* See Form No. 1.

App. M.  
Nov. 4, 5.

paid by the said                      to                      together with certain costs in the said (6)                      mentioned, and which costs have been taxed and allowed at the sum of \$                      . And that of the goods and chattels of the said                      in your bailiwick you further cause to be made the said sum of \$                      (7) together with interest thereon at the rate of 5 per centum per annum from the day of                      , and that you have that money and interest before us in our said court immediately after the execution hereof to be paid to the said                      in pursuance of the said (8).                      . And in what manner you have executed this our writ make appear to us in\* our Supreme Court of Judicature immediately after the execution thereof. And have there then this writ.

Witness, &c.

Cause possession to be delivered to the (9)                      of the within-mentioned premises (10).

- |   |  |
|---|--|
| (1) "Judgment" or "order."                        | (5) "Judgment therein adjudged" or "order dated the day of ordered." |
| (2) "Adjudged" or "ordered."                      | (6) "Judgment" or "order."   |
| (3) "Plaintiff," or as may be.                    | (7) Costs.   |
| (4) Describe premises as in judgment or in order. | (8) "Judgment" or "order."   |
| (9) Plaintiff, or as may be.                      | (10) If for part only of premises, say "described" as.               |

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No. 5.

Writ of Possession (O. 45).

[*Heading as in No. 1.*]

EDWARD THE SEVENTH, by the Grace of God, &c.

To the Sheriff of                      , greeting: Whereas lately in our Supreme Court of Judicature, by a judgment of the                      division of the same court [A. B. recovered] or [E. F. was ordered to deliver to A. B.] possession of all that                      with the appurtenances in your bailiwick: Therefore, we command you that you omit not by reason of any liberty of your county, but that you enter the same, and without delay you cause the said A. B. to have possession of the said land and premises with the appurtenances. And in what manner, &c. And have you there then this writ.

Witness, &c.

\* See Form No. 1.

## No. 6.

App. H.  
Nos. 6, 7.

Writ of Delivery (O. 46).

[Heading as in No. 1.]

EDWARD THE SEVENTH, by the Grace of God, &amp;c.

To the Sheriff of \_\_\_\_\_, greeting: We command you, that without delay you cause the following chattels, that is to say [*here enumerate the chattels recovered by the judgment or order for the return of which execution has been ordered to issue*], to be returned to A. B., which the said A. B. lately in our Supreme Court of Judicature, recovered against C. D. [*or C. D. was ordered to deliver to the said A. B.*] in an action in the said Court.\* And we further command you, that if the said chattels cannot be found in your bailiwick, you distrain the said C. D. by all his lands and chattels in your bailiwick, so that neither the said C. D. nor anyone for him do lay hands on the same until the said C. D. render to the said A. B. the said chattels.† And in what manner, &c. And have you there then this writ.

Witness, &amp;c.

## No. 7.

*The like, but instead of a distress until the chattel is returned, commanding the Sheriff to levy on defendant's goods the assessed value of it.*

(*Proceed as in the preceding form until the \*, and then thus:*) And we further command you, that if the said chattels cannot be found in your bailiwick, of the goods and chattels of the said C. D. in your bailiwick you cause to be made \$ \_\_\_\_\_ [*the assessed value of the chattels*].† And in what manner, &c. And have you there then this writ. Witness, &c.

[*If in either of the preceding forms it is wished to include damages, costs, and interest, proceed to the † and continue thus:*]

And we further command you that of the goods and chattels of the said C. D. in your bailiwick you cause to be made the sum of \$ \_\_\_\_\_ [damages]. And also interest thereon at the rate of 5 per centum per annum, from the \_\_\_\_\_ day of \_\_\_\_\_, which said sum of money and interest were in the

App. M.  
Nos. 7, 8.

said action by the judgment therein [*or* by order] dated the day of adjudged [*or* ordered] to be paid by the said C. D. to A. B. together with certain costs in the said judgment [*or* order] mentioned, and which costs have been taxed and allowed at the sum of \$ . And that of the goods and chattels of the said C. D. in your bailiwick, you further cause to be made the said sum of \$ [costs], together with interest thereon at the rate of 5 per centum per annum from the day of , and that you have that money and interest before us in our said Court\* immediately after the execution hereof to be paid to the said A. B. in pursuance of the said judgment [*or* order].

And in what manner, &c.

And have you there this writ.

Witness, &c.

### No. 8.

Writ of Attachment (O. 43).

[*Heading as in No. 1.*]

EDWARD THE SEVENTH, by the Grace of God, &c.

To the Sheriff of , greeting:

We command you to attach C. D. so as to have him before us in the Court of Appeal of our Supreme Court of Judicature wheresoever the said court shall then be, there to answer to us, as well touching a contempt which he it is alleged hath committed against us, as also such other matters as shall be then and there laid to his charge, and further to perform and abide such order as our said court shall make in this behalf, and hereof fail not, and bring this writ with you.

Witness, &c.

*Endorsement.*—This writ was issued by, &c., and was issued pursuant to order dated the day of 19 , for such default as is therein mentioned [being, &c.].

\* See Form No. 1.

## No. 9.

Writ of Sequestration (O. 42).

[Heading as in No. 1.]

EDWARD THE SEVENTH, by the Grace of God, &amp;c.

To [*names of not less than four Commissioners*] greeting:

Whereas lately in our Supreme Court of Judicature in a certain action there depending, wherein A. B. is plaintiff, and C. D. and others are defendants [*or, in a certain matter then depending, intituled "In the matter of E. F.," as the case may be*], by a judgment [*or order, as the case may be*], of our said court made in the said action [*or matter*], and bearing date the      day of      , 19      , it was ordered that the said C. D. should [pay into court to the credit of the said action the sum of \$      , *or, as the case may be*]. Know ye, therefore, that we in confidence of your prudence and fidelity, have given, and by these presents do give to you, or any three or two of you, full power and authority to enter upon all the messuages, lands, tenements, and real estate whatsoever of the said C. D., and to collect, receive and sequester into your hands not only all the rents and profits of his said messuages, lands, tenements, and real estate, but also all his goods, chattels, and personal estates whatsoever; and therefore we command you, any three or two of you, that you do at certain proper and convenient days and hours, go to and enter upon all the messuages, lands, tenements, and real estates of the said C. D., and that you do collect, take, and get into your hands not only the rents and profits of his said real estate, but also all his goods, chattels and personal estate, and detain and keep the same under sequestration in your hands until the said C. D. shall [pay into court to the credit of the said action the sum of \$      , *or, as the case may be*], clear his contempt, and our said court make other order to the contrary

Witness, &amp;c.

## APPENDIX J.

## FORMS OF SUBPŒNA, &amp;c.

## No. 1.

Subpœna ad Testificandum (General Form) (O. 36, r. 29).

In the Supreme Court of Judicature.

Between A. B., Plaintiff,

and

C. D., Defendant.

EDWARD THE SEVENTH, by the Grace of God, &c.

To [*names of witnesses*], greeting: We command you to attend before        at        on        the        day of       , 19       , at the hour of        in the        noon, and so from day to day until the above cause is tried, to give evidence on behalf of the plaintiff [*or defendant*].

Witness, &c.

## No. 2.

Habeas Corpus ad Testificandum (O. 36, r. 29).

[*Heading as in No. 1.*]

EDWARD THE SEVENTH, by the Grace of God, &c.

To the [keeper of our prison at]

We command you that you bring       , who it is said is detained in our prison under your custody       , before        at        on        the        day of        at the hour of        in the        noon, and so from day to day until the above action is tried, to give evidence on behalf of the       . And that immediately after the said        shall have so given his evidence you safely conduct him to the prison from which he shall have been brought.

Witness, &c.

## No. 3.

Subpœna Duces Tecum (General Form) (O. 36, r. 25)

[*Heading as in No. 1.*]

EDWARD THE SEVENTH, by the Grace of God, &c.

To [*names of witnesses*] greeting: We command you to

attend before \_\_\_\_\_ at \_\_\_\_\_, on \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_  
 \_\_\_\_\_, 19\_\_\_\_, at the hour of \_\_\_\_\_ in the \_\_\_\_\_ noon, and so  
 from day to day until the above cause is tried, to give evi-  
 dence on behalf of the \_\_\_\_\_, and also to bring with you an  
 produce at the time and place aforesaid [*specify documents to  
 be produced*].

Witness, &c.

No. 4.

Subpoena ad Testificandum at Sittings (O. 36, r. 29).

[*Heading as in No. 1.*]

EDWARD THE SEVENTH, by the Grace of God, &c.

To [*names of witnesses*], greeting: We command you to  
 attend at the sittings of the trial division of our Supreme  
 Court of Judicature, to be holden at \_\_\_\_\_, on \_\_\_\_\_ the  
 day of \_\_\_\_\_, 19\_\_\_\_, at the hour of \_\_\_\_\_ in the \_\_\_\_\_ noon,  
 and so from day to day during the said sittings until the  
 above cause is tried, to give evidence on behalf of the \_\_\_\_\_.

Witness, &c.

No. 5.

Subpoena Duces Tecum at Sittings (O. 36, r. 29).

[*Heading as in No. 1.*]

EDWARD THE SEVENTH, by the Grace of God, &c.

To [*names of witnesses*], greeting: We command you  
 attend at the sittings of the trial division of our Supreme  
 Court of Judicature, to be holden at \_\_\_\_\_, on \_\_\_\_\_ day the  
 day of \_\_\_\_\_, 19\_\_\_\_, at the hour of \_\_\_\_\_ in the  
 noon, and so from day to day during the said sittings until the  
 above cause is tried, to give evidence on behalf of the \_\_\_\_\_  
 and also to bring with you and produce at the time and place  
 aforesaid [*specify documents to be produced*].

Witness, &c.



APP. J.  
 Nov. 6, 7.

No. 6.

Warrant for Arrest of a Defaulting Witness (O. 36. r. 34).

PROVINCE OF NEW BRUNSWICK,  
 IN THE SUPREME COURT OF JUDICATURE.

Between A. B., Plaintiff,  
 and  
 C. D., Defendant.

To, &c.

Whereas proof has been made before me that H. N. was duly subpoenaed to give evidence on behalf of the plaintiff [*or, as the case may be*], in the above cause at the sittings of the trial division of the Supreme Court of Judicature (*or, as the case may be*), at \_\_\_\_\_ (*or, as the case may be*), which commenced on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_; that the presence of the said H. N. is material to the ends of justice; and that the said H. N. has failed to attend in accordance with the requirements of the subpoena.

These are therefore to command you to take the said H. N. and to bring and have him before me at the said sittings, or before such other Judge as may be presiding thereat, there to testify what he may know concerning the matters in question in the said cause, and that you detain him in your custody until he shall have given his evidence, or until the said sittings shall have ended, or until other order be made by the Court concerning him.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, A. D.,  
 19\_\_\_\_, at \_\_\_\_\_.

No. 7.

Writ of Inquiry for Assessment of Damages (O. 35. rr. 25-29).

[*Heading as in No. 1.*]

EDWARD THE SEVENTH, by the Grace of God, &c.

To the Sheriff of \_\_\_\_\_, greeting: Whereas it has been adjudged that the plaintiff recover against the defendant damages to be assessed \_\_\_\_\_.

Therefore we command you, that by the oaths of good and lawful men of your bailiwick you enquire what damages the plaintiff is entitled to recover under the said \_\_\_\_\_.

judgment, and that forthwith thereafter you send the inquisition which you shall take thereupon to our said court, under your seal, and the seals of those by whose oaths you take the inquisition, together with this writ.

Witness, &c.

App. J.  
No. 8. 9.

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No. 8.

Certiorari (O. 68).

EDWARD THE SEVENTH, by the Grace of God, &c.

To \_\_\_\_\_, greeting: We, being willing for certain causes to be certified of a certain conviction and proceedings had before you \_\_\_\_\_, Police Magistrate in and for the \_\_\_\_\_ of \_\_\_\_\_, [or, as the case may be], as such Police Magistrate in and for the \_\_\_\_\_ of \_\_\_\_\_, whereunder A. B. on the information and complaint of C. D. stands convicted; command you that you send to us in our Court of Appeal at Fredericton forthwith on the receipt hereof, all and singular the information, depositions, evidence, conviction, orders and proceedings aforesaid, with all things touching the same as fully and entirely as they remain in your custody or keeping, together with this our writ, that we may further cause to be done thereupon what of right and according to law we shall see fit to be done.

Witness, &c.

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No. 9.

Commission to Examine Witnesses (O. 36, r. 9).

[Heading as in No. 1.]

EDWARD THE SEVENTH, by the Grace of God, &c.

To \_\_\_\_\_, of \_\_\_\_\_, commissioner named by and on behalf of the \_\_\_\_\_, and to \_\_\_\_\_, commissioner named by and on behalf of the \_\_\_\_\_, greeting: Know ye that we in confidence of your prudence and fidelity have appointed you and by these presents give you power and authority to examine on interrogatories and *viva voce* as hereinafter mentioned, witnesses on behalf of the said \_\_\_\_\_ and \_\_\_\_\_ respectively at \_\_\_\_\_, before you or either of you, and we command you as follows:

App. J.  
No. 2.

1. Both the said                      and the said                      shall be at liberty to examine on interrogatories and *viva voce* on the subject-matter thereof or arising out of the answers thereto such witnesses as shall be produced on his or their behalf with liberty to the other party to cross-examine the said witnesses on cross-interrogatories and *viva voce*, the party producing any witness for examination being at liberty to re-examine him *viva voce*; and all such additional *viva voce* questions, whether on examination, cross-examination, or re-examination, shall be reduced into writing, and with the answers thereto shall be returned with the said commission.

2. Not less than forty-eight hours before the examination of any witness on behalf of either of the said parties, notice in writing, signed by the commissioner of the party on whose behalf the witness is to be examined, and stating the time and place of the intended examination, shall be given to the other party by delivering the notice to—[*name and address of the person named for this purpose*] (or to a grown up person there), [*where commissioner may be appointed for each party, and no agent of the other party is appointed*, to the commissioner of the other party at the address of such commissioner or to a grown up person for him at his address], and if the commissioner of that party neglect to attend pursuant to the notice, then the commissioner of the party on whose behalf the notice is given, shall be at liberty to proceed with and take the examination of the witness or witnesses *ex parte*, and adjourn any meeting or meetings, or continue the same from day to day until all the witnesses intended to be examined by virtue of the notice have been examined, without giving any further or other notice of the subsequent meeting or meetings.

3. In the event of any witness on his examination, cross-examination, or re-examination producing any book, document, letter, paper, or writing, and refusing for good cause to be stated in his deposition to part with the original thereof, then a copy thereof, or extract therefrom, certified by the commissioners or commissioner present and acting to be a true and correct copy or extract, shall be annexed to the witness's deposition.

4. Each witness to be examined under this commission shall be examined on oath, affirmation, or otherwise in ac-

cordance with his religion by or before the commissioners or commissioner present at the examination.

APP. J.  
NO. 2.

5. If any one or more of the witnesses do not understand the English language (the interrogatories, cross-interrogatories, and *viva voce* questions, if any, being previously translated into the language with which he or they is or are conversant), then the examination shall be taken in English through the medium of an interpreter or interpreters to be nominated by the commissioners or commissioner present at the examination, and to be previously sworn according to his or their several religions by or before the said commissioners or commissioner truly to interpret the questions to be put to the witness and his answers thereto.

6. The depositions to be taken under this commission shall be subscribed by the witness or witnesses, and by the commissioners or commissioner who shall have taken the depositions, except where the examination is taken in shorthand, in which case it shall not be necessary for the depositions to be read over or signed by the witness or witnesses, unless any of the parties so desire; but in such cases a copy of the depositions in longhand or in typewriting, shall be certified by the shorthand writer as correct and signed by the commissioners or commissioner who shall have taken the depositions.

7. The depositions shall be certified under the hand of the commissioners or commissioner and together with the interrogatories, cross-interrogatories, and any documents referred to therein, or certified copies thereof or extracts therefrom, shall be sent to the Registrar of the Supreme Court of Judicature on or before the       day of       , enclosed in a cover under the seals or seal of the commissioners or commissioner, and indorsed with the title of the cause or matter.

8. Before you or any of you, in any manner act in the execution hereof, you shall severally take the oath hereon indorsed on the Holy Evangelists or otherwise in such other manner as is sanctioned by the form of your several religions and is considered by you respectively to be binding on your respective consciences.

Witness, &c.

App. J.  
No. 9.

**Witnesses' Oath.**

You are true answer to make to all such questions as shall be asked you, without favour or affection to either party, and therein you shall speak the truth, the whole truth, and nothing but the truth.

So help you God.

**Commissioners' Oath.**

You shall, according to the best of your skill and knowledge, truly and faithfully, and without partiality to any or either of the parties in this cause, take the examinations and depositions of all and every witness and witnesses produced and examined by virtue of the commission within written.

So help you God.

**Interpreter's Oath.**

You shall truly and faithfully, and without partiality to any or either of the parties in this cause, and to the best of your ability, interpret and translate the oath or oaths, affirmation or affirmations which he shall administer to, and all and every the questions which shall be exhibited or put to, all and every witness and witnesses produced before and examined by the commissioners named in the commission within written, as far forth as you are directed and employed by the said commissioners, to interpret and translate the same out of the English into the language of such witness or witnesses, and also in like manner to interpret and translate the respective depositions taken and made to such questions out of the language of such witness or witnesses into the English language. So help you God.

**Clerk's Oath.**

You shall truly, faithfully, and without partiality to any or either of the parties in this cause, take, write down, transcribe and engross all and every the questions which shall be exhibited or put to all and every witness and witnesses, and also the depositions of all and every such witness and witnesses produced before and examined by the said commissioners named in the commission within written, as far forth as you

are directed and employed by the commissioners to take, write down, transcribe or engross the said questions and depositions. So help you God.

App. J.  
No. 9.

[The commissioner administering the above oath shall certify in writing under his hand that the oath in the above form was administered by him to the Clerk before the execution of the commission was proceeded with.]

*Instructions as to the Execution of the within Commission.*

First.—See that the proper notice of examination is given to the parties concerned. Where both parties have named commissioners and the commission is executed by the commissioner of one party only he shall certify as follows: “I, one of the commissioners named in the annexed commission, served the notice hereto annexed upon \_\_\_\_\_, a commissioner named in said commission, by delivering a true copy thereof to him (or as the case may be) on the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_, and he did not attend, or join in the execution of the said commission. Dated, &c.”

Second.—Follow all the directions and requirements of the commission strictly.

Third.—When executed, annex all the interrogatories, *viva voce* questions, depositions, exhibits, affidavits, and other papers firmly to the commission, and enclose them all in an envelope. Commissioner should put his seal on the envelope and write his name opposite the seal.

Fourth.—Indorse the title of the cause on the envelope, and address it to the Registrar of the Supreme Court of Judicature, Fredericton, New Brunswick.

Fifth.—The oath or affirmation to be taken before entering on the execution of the commission should be made or affirmed by the commissioner before a Judge of the High Court of Great Britain or Ireland, or of the Court of Session in Scotland, or before any notary public, certified under his hand and official seal, or before the mayor or chief magistrate of any city, borough, municipality or town corporate, certified under the common or corporate seal of such city, borough, municipality or town corporate, or the seal of such mayor or chief magistrate, or before a Judge of a Court of Supreme

**APP. J.**  
**NO. 9.**

Jurisdiction in any British Colony or dependency, or before any Consul, British Minister, Ambassador, Vice-Consul, or Acting Consul, Pro-Consul or Consular Agent of His Majesty, exercising his functions in any foreign place, or before the Governor of any State, or before a commissioner authorized by the laws of New Brunswick to take affidavits in and for any of the Courts of the Province, in and concerning any cause, matter, or thing depending or in any wise concerning any of the proceedings to be had in the said Courts. The handwriting and certificate of any such Judge being authenticated under the seal of a notary public, and the taking of any such oath, etc., before such Minister, Ambassador, Consul, Vice-Consul, Acting Consul, Pro-Consul, Consular Agent or Governor, being certified respectively under his hand and seal of office. The officer administering the oath shall certify in writing that the oath in the form in the commission was administered by him to the commissioner named in the commission.





App. K.  
Nov. 3, 4.

This summons was taken out by \_\_\_\_\_, solicitor for the above-named \_\_\_\_\_.

The defendant may appear hereto by entering an appearance either personally or by solicitor with the Registrar of the Court, Fredericton, and delivering a copy to \_\_\_\_\_.

*Note.*—If the defendant does not enter appearance within the time and in the manner above mentioned, such order will be made and proceedings taken as the Judge may think just and expedient.

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No. 3.

Originating Summons not Inter Parties (O. 61, r. 3).

In the Supreme Court of Judicature.

In the matter of the Trusts of the Will of A. B. [*or, as the case may be*].

Let \_\_\_\_\_ of \_\_\_\_\_, in the county of \_\_\_\_\_, within eight days after service of this summons on him, inclusive of the day of such service, cause an appearance to be entered for him to this summons, which is issued upon the application of \_\_\_\_\_ of \_\_\_\_\_, in the county of \_\_\_\_\_, for an order that [*state the object of the application*].

Dated, &c.

This summons was taken out by \_\_\_\_\_ of \_\_\_\_\_, solicitor for the above-named \_\_\_\_\_.

The respondent may appear hereto by entering an appearance either personally or by solicitor with the Registrar of the Court, Fredericton, and delivering a copy to \_\_\_\_\_.

*Note.*—If the respondent does not enter appearance within the time and in the manner above mentioned, such order will be made and proceedings taken as the Judge may think just and expedient.

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No. 4.

Notice of Appointment to hear Originating Summons (O. 61, r. 5).

[*Heading.*]

To [*insert the name of the defendant or respondent*]. Take notice that you are required to attend the Judge in Chambers [*or at the Chambers of Mr. Justice \_\_\_\_\_*], [at \_\_\_\_\_]

], on , the day of , 19 , at o'clock App. R.  
Nos. 5, 6.  
in the noon, for the hearing of the originating summons issued herein on the day of , 19, and that if you do not attend in person or by solicitor at the time and place mentioned, such order will be made and proceedings taken as the Judge may think just and expedient.

(Signed)  
Solicitor for the Plaintiff [or Applicant].

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No. 5.

**Form of Ex Parte Originating Summons.**

In the Supreme Court of Judicature.

In the matter of A. B., an infant [or as may be].

Let all parties concerned attend at the Chambers of Mr. Justice , at , on , the day of , 19 , at the hour of o'clock in the noon, on the hearing of an application on the part of the above named A. B., an infant, by C. D., his next friend, that, &c.

This summons was taken out by of , solicitor for the applicant.

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No. 6.

Order (General Form) (O. 61, r. 17).

[Heading as in No. 1.]

Mr. Justice , in Chambers.

Between

Upon hearing , and upon reading the affidavit of , dated the day of , 19 , and

It is ordered , and that the costs of this application be

Dated the day of , 19 .

**App. K.  
Nos. 1, 8.**

## No. 7.

Affidavit for filing with Order by Consent.

[*Heading as in Form 1.*]

I, \_\_\_\_\_ of \_\_\_\_\_ [*Description*] make oath and say  
as follows:—

1. That a consent to a [*nature of the order*] order was  
given on the \_\_\_\_\_ day of \_\_\_\_\_ in the Year of our Lord  
one thousand nine hundred and \_\_\_\_\_, and which order [*or*  
a true copy of which order] is hereto annexed marked A.

2. And I further say that the defendant is a \_\_\_\_\_ and  
resides at \_\_\_\_\_.

This affidavit is filed on behalf of \_\_\_\_\_  
Sworn, &c.

## No. 8.

Summons for Directions pursuant to O. 30.

[*Heading as in Form 1.*]

Let all the parties concerned attend the Judges' Chambers  
at [ \_\_\_\_\_ ] on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, at  
\_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, on the hearing of an  
application on the part of \_\_\_\_\_ to show cause why an  
order for directions should not be made in this action as  
follows:—

Pleadings.  
Particulars.

[*That the \_\_\_\_\_ deliver within \_\_\_\_\_ days  
particulars of \_\_\_\_\_ and that in  
default all further proceedings in this  
action be stayed until such particulars  
are delivered [or, that the defendant  
be precluded from giving evidence in  
support thereof on the trial of the  
action] and that the \_\_\_\_\_ have  
\_\_\_\_\_ days to deliver his \_\_\_\_\_ after de-  
livery of such particulars.*]

Admissions.

Discovery. [That the file and deliver an  
affidavit of documents in ten days.]  
Interrogatories. [For leave to interrogate the  
Answers to be filed and delivered  
within ten days.]  
Inspection of  
documents.  
Inspection of real or  
personal property.  
Commissions.  
Examination of  
witnesses.  
Place of trial.  
Mode of trial.  
Any other interlocutory  
matter or thing.  
Dated the day of .  
This summons was taken out by solicitor for .

APP. K.  
Nos. 8, 9.

No. 9.

Order for Directions (O. 30).

Upon hearing the solicitors on both sides, the following directions are hereby given, and it is ordered

That there be pleadings in the action.

That the deliver to the an account in writing of the particulars of and that, unless such particulars be delivered within days from the date of this order, all further proceedings be stayed until the delivery thereof, and that the defendant have days after delivery of the said particulars to deliver his defence.

That the plaintiff and defendant do, respectively, within ten days from the date of this order, answer on affidavit stating what documents are or have been in their possession or power relating to the matters in question in this action.

That the plaintiff be at liberty to deliver to the defendant, and that the defendant be at liberty to deliver to the plaintiff, interrogatories in writing, and that the said interrogatories be answered as prescribed by O. 31, r. 7, of the Rules of Court.

That the action be tried at .

That the action be tried with .

And that the costs of this application be .

Dated the day of , 19 .

App. K.  
Nos. 10, 11.

## No. 10.

## Summons for Third Party Directions (O. 16, r. 39).

Let all parties concerned attend the Judge [or Mr. Justice  
] in Chambers, at  
on the day of , 19 , at o'clock in  
the , noon on the hearing of an application on the part  
of for an order for third party directions, as follows:—  
that the defendant deliver a statement of his claim to the said  
third party within days from this date, who shall plead  
thereto within days. And that the said third party be  
at liberty to appear at the trial of this action, and take such  
part as the Judge shall direct, and be bound by the result of  
the trial.

And that the question of the liability of the said third  
party to indemnify the defendant be tried at the trial of this  
action, but subsequent thereto.

Dated the day of , 19 .

This summons was taken out by of , solicitor  
for  
To .

## No. 11.

## Order for Third Party Directions (O. 16, r. 39).

Upon hearing the solicitors for the plaintiff, defendant, and  
third party,

It is ordered that the defendant deliver a statement of his  
claim to the said third party within days from this date,  
who shall plead thereto within days. And that the said  
third party be at liberty to appear at the trial of this action,  
and take such part as the Judge shall direct, and be bound by  
the result of the trial. And that the question of the liability  
of the said party to indemnify the defendant be tried at the  
trial of the action but subsequent thereto, and that the costs  
of this application be

Dated, &c.

No. 12.

App. K.  
Nos. 12, 13, 14.

Order under Order 14, (No. 1).

[*Heading as in Form 1.*]

Upon hearing                      and upon reading the affidavit of                      ,  
dated the                      day of                      , 19                      , and

It is ordered that the plaintiff may sign final judgment in this action for the amount indorsed on the writ, with interest, if any, [or possession of the land in the indorsement of the writ described as                      ] and costs to be taxed.

Dated the                      day of                      19                      .

No. 13.

Order under Order No. 14, (No. 2).

[*Heading as in Form 1.*]

Upon hearing                      and upon reading the affidavit of                      ,  
dated the                      day of                      , 19                      , and

It is ordered that the defendant be at liberty to defend this action, and that the costs of this application be                      .

Dated the                      day of                      , 19                      .

No. 14.

Order under Order 14, (No. 3).

[*Heading as in Form 1.*]

Upon hearing                      and upon reading the affidavit of                      ,  
dated the                      day of                      , 19                      , and

It is ordered that if the defendant                      pay into Court within                      days from the date of this order the sum of \$                      , he be at liberty to defend this action: but that if that sum be not so paid, the plaintiff be at liberty to sign final judgment for the amount endorsed on the writ of summons, with interest, if any, and costs, and that in either event the costs of this application be                      .

Dated the                      day of                      , 19                      .

**APP. K.**  
**Nos. 15, 16, 17.**

## No. 15.

Order under Order 14, (No. 4).

*[Heading as in Form 1.]*

Upon hearing                      and upon reading the affidavit of                      ,  
dated the                      day of                      , 19                      , and                      .

It is ordered that if the defendant pay into Court within                      days from the date of this order the sum of \$                      he be at liberty to defend this action as to the whole of the plaintiff's claim.

And it is ordered that if that sum be not so paid, the plaintiff be at liberty to sign judgment for that sum, and the defendant be at liberty to defend this action as to the residue of the plaintiff's claim, and that the costs of this application be

Dated the                      day of                      , 19                      .

---

## No. 16.

Order under Order 14, (No. 5).

*[Heading as in Form 1.]*

Upon hearing                      and upon reading the affidavit of                      ,  
dated the day                      of                      , 19                      , and                      .

It is ordered that if the defendant                      do not pay to the plaintiff's solicitor within                      days from the date of this order, the sum of \$                      , the plaintiff be at liberty to sign judgment for the same.

And it is further ordered that the said defendant be at liberty to defend this action as to the residue of the plaintiff's claim, and that the costs of this application be costs in the action.

Dated the                      day of                      , 19                      .

---

## No. 17.

Order under Order 14, No. 6. (Against a Married Woman and Others).

*[Heading as in Form 1.]*

Upon hearing the solicitors on both sides and reading the affidavit of                      :

It is ordered that the plaintiff be at liberty to sign final judgment in this action for the amount endorsed on the writ,

with interest (*if any*) and costs to be taxed, and that as regards the defendant A. B. (*the married woman*) such sum and costs be payable out of her separate property and not otherwise.

App. K.  
Nos. 18, 19.]

Dated the            day of            , 19   .

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No. 18.

Order to Amend (O. 29, r. 1).

[*Heading as in No. 1*]

Upon hearing            and upon reading the affidavit of            ,  
dated the            day of            , 19   , and

It is ordered that the plaintiff be at liberty to amend the writ of summons in this action by            , and that the costs of this application be            .

Dated the            day of            19   .

---

No. 19.

Order for Particulars (General) (O. 19, r. 6).

[*Heading as in No. 1.*]

Upon hearing            and upon reading the affidavit of            ,  
dated the            day of            , 19   , and

It is ordered that the plaintiff deliver to the defendant an account in writing of the particulars of the plaintiff's claim in this action, and that unless such particulars be delivered within            days from the date of this order, all further proceedings be stayed until the delivery thereof, and that the defendant have            days after the delivery of the said particulars to deliver his defence, and that the costs of this application be            .

Dated the            day of            , 19   .



App. K.  
Nos. 20, 21, 22.

## No. 20.

Order for Particulars of Counterclaim (O. 19, r. 6).

[*Heading as in No. 1.*]

Upon hearing            and upon reading the affidavit of            ,  
dated the            day of            19    , and            .

It is ordered that the defendant            do within            days  
deliver to the plaintiff's solicitor or agent particulars of the  
said defendant's set-off (counter-claim), that in default of the  
said defendant be precluded from giving evidence in support  
thereof on the trial of this action, and that the costs of this  
application be            .

Dated the            day of            , 19    .

## No. 21.

Orders for Particulars (Accident Case) (O. 19, r. 6).

[*Heading as in No. 1.*]

Upon hearing            and upon reading the affidavit of            ,  
dated the            day of            , 19    , and            .

It is ordered that the plaintiff deliver to the defendant an  
account in writing of the particulars of the injuries men-  
tioned in the statement of claim, together with the time and  
place of the accident, and the particular acts of negligence  
complained of, and that unless such particulars be delivered  
within            days from the date of this order all further pro-  
ceedings in this action be stayed until the delivery thereof,  
and that the costs of this application be            .

Dated the            day of            , 19    .

## No. 22.

Order to Discharge or Vary on Application by Third Party (O. 16, rr. 35-43).

[*Heading as in No. 1.*]

Upon hearing            and upon reading the affidavit of            ,  
dated the            day of            , 19    , and            .

It is ordered that the order of            in this action, dated  
the            day of            , 19    , be discharged [*or, varied by*            ],  
and that the costs of this application be            .

Dated the            day of            , 19    .

**App. K.**  
**Nos. 23, 24, 25.**

[Heading as in No. 1.]

Dated the                      day of                      , 19   .

[Heading as in No. 1.]

Dated the                      day of                      19   .

[Heading us in No. 1.]

Dated the            day of            , 19    .

App. K.  
Nos. 26, 27.

## No. 26.

## Order to Produce Documents for Inspection (O. 31, r. 13).

[*Heading as in No. 1.*]

Upon hearing                      and upon reading the affidavit of  
dated the                      day of                      , 19                      , and

It is ordered that the                      do, at all seasonable times, on reasonable notice, produce at [*insert place of inspection*], situate at                      , the following documents, namely                      and that the                      be at liberty to inspect and peruse the documents so produced, and to take copies and abstracts thereof and extracts therefrom, at                      expense, and that in the meantime all further proceedings be stayed, and that the costs of this application be                      .

Dated the                      day of                      , 19                      .

## No. 27.

## Order for Production (Underwriters).

[*Heading as in No. 1.*]

Upon hearing                      and upon reading the affidavit of                      ,  
dated the                      day of                      , 19                      , and

It is ordered that the                      do produce and show to the                      upon oath all insurance slips, policies, letters of instruction, or other orders for effecting such slips or policies, or relating to the insurance or the subject-matter of the insurance on the ship                      , or the cargo on board thereof, or the freight thereby, and also all documents relating to the sailing or alleged loss of the said ship                      , the cargo on board thereof, and the freight thereby, and all letters and correspondence with any person or persons in any manner relating to the effecting the insurance on the said ship, the cargo on board thereof, or the freight thereby, or any other insurance whatsoever effected on the said ship, or the cargo on board thereof, or the freight thereby on the voyage insured by, or relating to the policy sued upon in this action, or any other policy whatsoever effected on the said ship, or the cargo on board thereof, or the freight thereby on the same voyage. Also all correspondence between the captain or agent of the

vessel and any other person, with the owner or any person or persons previous to the commencement of or during the voyage upon which the alleged loss happened. Also all protests, surveys, log-books, charter-parties, tradesmen's bills for repairs, average statements, letters, invoices, bills of parcels, bills of lading, manifests, accounts, accounts-current, accounts-sales, bills of exchange, receipts, vouchers, books, documents, correspondence, papers, and writings (whether originals, duplicates, or copies respectively), which are now in the custody, possession, or power of the , his brokers, solicitors, or agents, in any way relating or referring to the matters in question in this action, with liberty for the to inspect and take copies of or extracts from the same or any of them, and that in the meantime all further proceedings be stayed, and that the costs of this application be .

- App. B.  
Nos. 27, 28.

Dated the            day of            , 19    .

--- --  
No. 28.

Order for Service out of Jurisdiction (O. 11).

In the matter of the Judicature Act, and in the matter of an intended action.

In the Supreme Court of Judicature.

Between            , Plaintiff,  
and  
Defendant.

Upon [hearing . . . . and upon] reading the affidavit of            , filed herein,

It is ordered that the intended plaintiff be at liberty to issue a writ [for service out of the jurisdiction] of summons against the intended defendant.

And it is further ordered that the said intended plaintiff be at liberty to serve            [If a foreigner in a foreign country insert "Notice of "] the said writ at            [Here insert country or place within the limits of which the service is to be made], or elsewhere in the            , and that the time for appearance to the said writ by the said intended defendant            be within            after the service [thereof] of the said [Here insert "Writ" or "Notice of" as may be required.]

Dated the            day of            , 19    .

No. 29.

[Heading as in No. 1.]

Dated the            day of            , 19    .

[Heading as in No. 1.]

Dated the            day of            , 19    .

[Heading as in No. 1.]

Dated the            day of            , 19    .

No. 32.

App. K.  
No. 32.

Order of Reference (O. 64, r. 14),

[*Heading as in Form 1.*]

Upon hearing                      and by consent

It is ordered as follows:

1. [*State matters to be referred*] shall be referred to the award of

2. The arbitrator shall have all the powers as to certifying and amending of a Judge of the Supreme Court of Judicature.

3. The arbitrator shall make and publish his award in writing of and concerning the matters referred, ready to be delivered to the parties in difference, or such of them as require the same (or their respective personal representatives, if either of the said parties die before the making of the award) on or before the                      next, or on or before such further day as the arbitrator may from time to time appoint and signify in writing signed by him and indorsed on this order.

4. The said parties shall in all things abide by and obey the award so to be made.

5. The costs of the said cause and the costs of the reference and award shall be

6. The arbitrator may (if he think fit) examine the said parties to this cause, and their respective witnesses, upon oath or affirmation.

7. The said parties shall produce before the arbitrator all books, deeds, papers, and writings in their or either of their custody or power relating to the matters in difference.

8. Neither the plaintiff nor the defendant shall bring or prosecute any action against the arbitrator of or concerning the matters so to be referred.

9. If either party by affected delay or otherwise wilfully prevent the said arbitrator from making an award, he or they shall pay such costs to the other as                      may think reasonable and just.

App. K.  
Nos. 32, 33, 34.

10. In the event of either of the said parties disputing the validity of the said award, or moving the                      to set it aside the said                      shall have power to remit the matters hereby referred or any or either of them to the reconsideration of the arbitrator.

11. In the event of the arbitrator declining to act or dying before he has made his award, the said parties may, or, if they cannot agree, the Court or a Judge may, on application by either side, appoint a new arbitrator.

12. Unless restrained by any order of the Court or a Judge the party or parties in whose favour the award shall be made shall be at liberty                      days after service of a copy of the award on the solicitor or agent of the other party to sign final judgment in accordance with the award, and for all costs that he or they may be entitled to under this order, and under the award, together with the costs of the said judgment.

Dated the                      day of                      , 19                      .

\_\_\_\_\_  
No. 33.

Order of Reference under O. 64, r. 13.

[*Heading as in Form 1.*]

Upon hearing                      and upon reading the affidavit of                      , dated the                      day of                      , 19                      , and                      .

It is ordered that the following question arising in this action, namely,                      be referred for inquiry and report to                      , under Rule 13 of Order 64 of the Rules of Court, and that the costs of this application be                      .

Dated the                      day of                      , 19                      .

\_\_\_\_\_  
No. 34.

Order of Reference under O. 64, r. 14.

Upon hearing the solicitors on both sides                      , and upon reading the affidavit of                      , filed herein                      .

It is ordered that the whole of this cause be tried before an official referee [or G. K, the special referee, or arbitrator,

agreed upon by the parties] who shall have all the powers of certifying and amending of a Judge of the Supreme Court of Judicature, and shall direct judgment to be entered and otherwise deal with the whole action pursuant to Order XXXV.

App. K.  
Nos. 35, 36.

Dated the                      day of                      , 19                      .

\_\_\_\_\_  
No. 35.

Order for Examination of Witnesses before Trial (O 36, r. 7).

[*Heading as in Form 1.*]

Upon hearing the solicitors on both sides, and upon reading the affidavit of                      , dated the                      day of                      , 19                      .

It is ordered that                      a witness on behalf of the                      , be examined *viva voce* (on oath or affirmation) before                      , Esquire, the                      solicitor giving to the                      solicitor notice in writing of the time and place where the examination is to take place.

And it is further ordered that the examination so taken be filed in the Office of the Supreme Court of Judicature, [*or as the Judge may direct*] and that the same may be read and given in evidence on the trial of the cause, saving all just exceptions, without any further proof of the absence of the said witness than the affidavit of the solicitor of the [*party using the same*] as to his belief, and that the costs of this application be costs in the action.

Dated the                      day of                      , 19                      .

\_\_\_\_\_  
No. 36.

Short Order for Issue of Commission to Examine Witnesses (O. 36, r. 9).

[*Heading as in Form 1.*]

Upon hearing                      and upon reading the affidavit of                      , dated the                      day of                      , 19                      , and

It is ordered that the                      be at liberty to issue a commission for the examination of witnesses on                      behalf at

And it is further ordered that the trial of this action be stayed until the return of the said commission [the usual





the cross-interrogatories intended to be administered to the said witnesses.

APP. K.  
No. 37.

4.                days previously to the sending out of the said commission, the solicitor of the said                shall give to the solicitor of the said                notice in writing of the mail or other conveyance by which the commission is to be sent out.

5. Within                days after service of this order upon or his solicitor the                shall deliver to the the name and place of business of his agent in aforesaid, whom he has appointed to appear for him upon such examination, and upon whom notice of the said examination may be served.

6. Not less than forty-eight hours before the examination of any witness on behalf of the said                or                respectively, notice in writing signed by the commissioner of the party on whose behalf the witness is to be examined, and stating the time and place of the intended examination, shall be given to the other party by delivering the notice to the agent of the other party, or if no agent is appointed, to the commissioner of the other party, by delivering the notice to him at his address or to a grown up person there, and if the commissioner of that party neglects to attend pursuant to the notice, then the commissioner of the party on whose behalf the notice is given shall be at liberty to proceed with and take the examination of the witness or witnesses *ex parte*, and adjourn any meeting or meetings or continue the same from day to day, until all the witnesses intended to be examined by virtue of the notice have been examined, without giving any further or other notice of the subsequent meeting or meetings.

7. In the event of any witness on his examination, cross-examination, or re-examination producing any book, document, letter, paper, or writing, and refusing, for good cause to be stated in his deposition, to part with the original thereof, then a copy thereof, or extract therefrom, certified by the commissioners or commissioner present to be a true and correct copy or extract, shall be annexed to the witness's deposition.

8. Each witness to be examined under the commission shall be examined on oath, affirmation or otherwise in accordance

App. K.  
No. 37.

with his religion by or before the said commissioners or commissioner.

9. If any one or more of the witnesses do not understand the English language (the interrogatories, cross-interrogatories, and *viva voce* questions, if any, being previously translated into the language with which he or they is or are conversant), then the examination shall be taken in English through the medium of an interpreter or interpreters to be nominated by the commissioners or commissioner, and to be previously sworn according to his or their several religions by or before the said commissioners or commissioner truly to interpret the questions to be put to the witness or witnesses, and his and their answers thereto.

10. The depositions to be taken under and by virtue of the said commission shall be subscribed by the witness or witnesses and by the commissioners or commissioner who shall have taken such depositions, except where the examination is taken in shorthand, in which case it shall not be necessary for the depositions to be read over or signed by the witness or witnesses, unless any of the parties so desire; but in such case a copy of the depositions in shorthand or in typewriting, shall be certified by the shorthand writer as correct, and signed by the commissioners or commissioner who shall have taken such depositions.

11. The depositions shall be certified under the hand of the commissioner or commissioners and together with the interrogatories, cross interrogatories, and depositions, and any documents referred to therein, or certified copies thereof or extracts therefrom, shall be sent to the Registrar of the Supreme Court of Judicature on or before the day of \_\_\_\_\_, or such further or other day as may be ordered, enclosed in a cover under the seal or seals of the said commissioners or commissioner, indorsed with the title of the cause or matter, and the same may be given in evidence on the trial of this action by and on behalf of the said \_\_\_\_\_ and \_\_\_\_\_ respectively, saving all just exceptions, without any other proof of the absence from this Province of the witness or witnesses therein named, than an affidavit of the solicitor of the said \_\_\_\_\_ or \_\_\_\_\_ respectively, as to his belief of the \_\_\_\_\_.

12. The trial of this action is to be stayed until the return of the said commission. App. R.  
Nos. 37, 38.

13. The costs of this order, and of the commission to be issued in pursuance hereof, and of the interrogatories, cross-interrogatories, and depositions to be taken thereunder, together with any such document, copy or extract as aforesaid, and all other costs incidental thereto, shall be

Dated the            day of            , 19    .

No. 38.

Order for Appointment of Special Examiner to take Evidence Abroad  
(O. 38, r. 7).

[*Heading as in Form 1.*]

Upon hearing the solicitors on both sides, and upon reading the affidavit of

It is ordered that            be appointed as special examiner for the purpose of taking the examination, cross-examination, and re-examination, *vivâ voce*, on oath or affirmation, of

witnesses on the part of the            at            aforesaid. The solicitor to give to the            solicitor            days' notice in writing of the date on which he proposes to send out this order to            for execution, and that            days after the service of such notice the solicitors for the plaintiffs and defendants respectively do exchange the names of their agents at            , to whom notice relating to the examination of the said witnesses may be sent. And that            days (exclusive of Sunday) prior to the examination of any witness hereunder notice of such examination shall be given by the agent of the party on whose behalf such witness is to be examined to the agent of the other party (unless such notice be dispensed with). And that the deposition when so taken, together with any documents referred to therein, or certified copies of such documents, or of extracts therefrom, be transmitted by the examiner, under seal, to the Registrar of the Supreme Court of Judicature, on or before the            day of next, or such further or other day as may be ordered, there to be filed in the proper office. And that either party may be at liberty to read and give such depositions in evidence on the

App. K.  
Nos. 39, 40.

trial of this action, saving all just exceptions. And that the trial of this action be stayed until the filing of such depositions. And that the costs of and incident to this application and such examination be costs in this action.

Dated the       day of       , 19       .

\_\_\_\_\_  
No. 39.

Interpleader Order (No. 1) (O. 59).

In the Supreme Court of Judicature.

In Chambers.

Between       , Plaintiff, and       , Defendant  
and

Between       , Claimant, and       , Respondent.

Upon hearing       and upon reading the affidavit of       ,  
dated the       day of       , 19       , and       .

It is ordered that the claimant be barred, that no action be brought against the above-named [*sheriff*], and that the costs of this application be       .

Dated the       day of       , 19       .

\_\_\_\_\_  
No. 40.

Interpleader Order (No. 2) (O. 59).

In the Supreme Court of Judicature.

In Chambers.

Between       Plaintiff,

and

Defendant,  
Claimant.

Upon hearing the solicitors for the plaintiff, the claimant, and the sheriff of       , and reading the affidavit of       .

It is ordered that the sheriff withdraw from possession of the goods seized by him under the writ of *feri facias* herein and claimed by the claimant, that no action be brought,       .

And that the       pay to the       the costs of the interpleader to be taxed, and possession money to the sheriff.

Dated the       day of       , 19       .

No. 41.

App. n.  
Nos. 41, 42.

Interpleader Order (No. 3.) (O. 59).

In the Supreme Court of Judicature.

In Chambers.

Between , Plaintiff, and , Defendant,  
and  
, Claimant.

Upon hearing and upon reading the affidavit of ,  
dated the day of , 19 , and

It is ordered that the above named claimant be substituted  
as defendant in this action in lieu of the present defendant,  
and that the costs of this application be

Dated the day of , 19

No. 42.

Interpleader Order (No. 4) (O. 59).

In the Supreme Court of Judicature.

In Chambers.

Between , Plaintiff, and , Defendant,  
and

Between , Claimant, and the said , execu-  
tion creditor, and , the Sheriff of ,  
Respondents.

Upon hearing and upon reading the affidavit of ,  
dated the day of , 19 , and

It is ordered that the said sheriff proceed to sell the goods  
seized by him under the writ of *fiery fucias* issued herein and  
claimed by the claimant, and pay the net proceeds of the sale  
after deducting the expenses thereof, into Court in this cause  
to abide further order herein.

And it is further ordered that the parties proceed to the  
trial of an issue in the Supreme Court of Judicature, in which  
the said claimant shall be the plaintiff and the said execution  
creditor shall be the defendant, and that the question to be  
tried shall be whether at the time of the seizure by the sheriff  
the said goods seized were the property of the claimant as  
against the execution creditor.

**APP. K.  
No. 43.**

And it is further ordered that this issue be prepared and delivered by the plaintiff therein within            from this date, and be returned by the defendant therein within            days, and be tried at

And it is further ordered that the question of costs and all further questions be reserved until the trial of the said issue, and that no action shall be brought against the said sheriff for the seizure of the said goods.

Dated the            day of            , 19    .

No. 43.

Interpleader Order (No. 5) (O. 59)

[*Heading as in No. 42.*]

Upon hearing, &c.

It is ordered that upon payment of the sum of \$            into Court by the said claimant within            from this date, or upon his giving within the same time security to the satisfaction of the Judge [*or as the case may be*] for the payment of the same amount by the said claimant according to the directions of any order to be made herein, and upon payment to the above-named sheriff of the possession-money from this date, the said sheriff do withdraw from the possession of the goods seized by him under the writ of *feri facias* herein and claimed by the claimant.

And it is further ordered that unless such payment be made or security given within the time aforesaid the said sheriff proceed to sell the said goods and pay the proceeds of the sale, after deducting the expenses thereof and the possession money from this date, into Court in the cause, to abide further order therein.

And it is further ordered that the parties proceed, &c.

And it is further ordered that this issue, &c.

And it is further ordered that the question of costs, &c.

Dated the            day of            , 19    .

No. 44.

App. K.  
Nos. 44, 45.

Interpleader Order (No. 6) (O. 59).

[*Heading as in No. 42.*]

Upon hearing, &c.

It is ordered that upon payment of the sum of \$       into Court by the said claimant, or upon his giving security to the satisfaction of the Judge [*or as the case may be*] for the payment of the same amount by the claimant according to the directions of any order to be made herein, the above-named sheriff withdraw from the possession of the goods seized by him under the writ of *fiery facias* issued herein.

And it is further ordered that in the meantime, and until such payment made or security given, the sheriff continue in possession of the goods, and the claimant pay possession-money for the time he so continues, unless the claimant desire the goods to be sold by the sheriff, in which case the sheriff is to sell them and pay the proceeds of the sale, after deducting the expenses thereof and the possession-money from this date, into Court in the cause, to abide further order herein.

And it is further ordered that the parties proceed, &c.

And it is further ordered that this issue, &c.

And it is further ordered that the question of costs, &c.

Dated the       day of       , 19       .

No. 45.

Interpleader Order (No. 7) (O. 59).

[*Heading as in No. 42.*]

The claimant and the execution creditor having requested and consented that the merits of the claim made by the claimant be disposed of and determined in a summary manner, now upon hearing and upon reading the affidavit of       , dated the       day of       , 19       , and

It is ordered that

And that the costs of this application be       .

Dated the       day of       , 19       .



APP. K.  
Nos. 46, 47, 48.

## No. 46.

Interpleader Order (No. 8) (O. 59).

[*Heading as in Form 42.*]

Upon hearing        and upon reading the affidavit of        ,  
dated the        day of        , 19        , and        .

It is ordered that the above-named sheriff proceed to sell enough of the goods seized under the writ issued in the action to satisfy the expenses of the said sale, the rent (if any) due, the claim of the claimant, and this execution.

And it is further ordered that out of the proceeds of the said sale (after deducting the expenses thereof, and rent, if any), the said sheriff pay to the claimant the amount of his said claim, and to the execution creditor the amount of his execution, and the residue, if any, to the defendant.

And it is further ordered that no action be brought against the said sheriff, and that the costs of this application be        .

Dated the        day of        , 19        .

## No. 47.

Order Dismissing Summons (generally).

[*Heading as in No. 1.*]

Upon hearing        and upon reading the affidavit of        ,  
dated the        day of        , 19        , and        .

It is ordered that the application of        be dismissed with costs, to be taxed and paid by the        to the        [or, and that the costs of and occasioned by this application be the        's in any event].

Dated the        day of        , 19        .

## No. 48.

Summons for Receiver, and Injunction (O. 47, r. 16).

In the Supreme Court of Judicature.

[*Heading as in No. 1.*]

Upon reading the affidavit of        .

Let the defendant        attend the Judge in Chambers, etc., on etc., on the hearing of an application on the part of        .

the plaintiff for the appointment of \_\_\_\_\_ as receiver in this action, on all usual terms, to receive the rents, profits and moneys receivable in respect of the defendant's interest in the following property, namely: \_\_\_\_\_, in satisfaction of the sum of \$ \_\_\_\_\_ due under the judgment in this action dated the \_\_\_\_\_,

App. K.  
Nos. 48, 49.

And, the plaintiff by his solicitor hereby undertaking to abide by any order the Court or a Judge may make as to damages in case the Court or a Judge should hereafter be of opinion that the defendant \_\_\_\_\_ shall have sustained any by reason of this order which the plaintiff ought to pay, it is ordered and directed that the said defendant \_\_\_\_\_, his agents and servants, and every of them, be restrained, and an injunction is hereby granted restraining them, and every of them, until after the hearing of the above application, from selling, charging, or otherwise dealing with the said property.

Dated the \_\_\_\_\_

Solicitor for the plaintiff.

To \_\_\_\_\_

No. 49.

Receiver Order (Interim) (O. 47, r. 8).

[*Heading as in No. 1.*]

Upon the application of \_\_\_\_\_ for the plaintiff and the plaintiff by his \_\_\_\_\_ undertaking to be answerable for all sums to be received by the receiver hereinafter named.

It is ordered that \_\_\_\_\_ be appointed without security until the \_\_\_\_\_ day of \_\_\_\_\_ next inclusive or further order, to receive the rents and profits of \_\_\_\_\_, but without prejudice to the rights of any prior incumbrancer or his possession (if any) and the tenants of the said estate are (without prejudice as aforesaid) to attorn and pay their rents in arrear and growing rents to the said \_\_\_\_\_ so long as he shall continue to be such receiver, and that all questions as to passing his accounts and payments thereunder and all further questions be reserved until further order.

Defendant to be at liberty to apply in meantime.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

App. K.  
No. 50.

No. 50.

Receiver Order (O. 47, r. 8).

[*Heading as in No. 1.*]

Upon hearing                      for the plaintiff, and upon reading the affidavit of                      .

It is ordered that                      be appointed receiver [upon first giving security by bond to the satisfaction of the Registrar of the Supreme Court of Judicature, *or as the case may be*] to receive the rents, profits, and monies, receivable in respect of the following property (that is to say):

But this appointment is to be without prejudice to the rights of any prior incumbrancers upon the said premises, who may think proper to take possession of or receive the same by virtue of their respective securities, or, if any prior incumbrancer is in possession, then without prejudice to such possession.

And that the tenants of the said premises do attorn and pay their rents in arrear and growing rents to such receiver. And that such receiver have liberty, if he shall think proper (but not otherwise), out of the rents, profits, and monies to be received by him, to keep down the interest upon the prior incumbrances, according to their priorities, and be allowed such payments (if any) in passing his accounts, and that such receiver shall on the                      day of                      next, and at such further and other times as may be ordered by the Judge file and pass such accounts, and shall on the                      day of                      next, and at such further and other times as may be hereafter ordered by the Judge pay the balance or balances appearing due on the accounts so filed or such part thereof as shall be certified as proper to be so paid; such sums to be paid in or towards satisfaction of what shall for the time being be due in respect of the judgment signed on the                      day of                      for the sum of \$                      debt, and \$                      for costs, making together the sum of \$                      ; and that the costs of this order and of carrying the same into effect and of obtaining the discharge of the receiver (such costs to be ascertained by the Judge, or by the Registrar of the Court if the Judge shall so order) shall be primarily payable out of the sums received by the receiver, but if there shall be no sums received or the

amount shall be insufficient, the amount of the deficiency shall be paid by the judgment debtor to the judgment creditor.

App. K.  
Nos. 51, 52.

It is further ordered that the balance (if any) remaining in the hands of the receiver, after making the several payments aforesaid, shall forthwith be paid by the receiver into Court to the credit of this action, subject to further order.

And any of the parties are to be at liberty to apply to the Judge in Chambers as there may be occasion.

Dated this       day of       , 19   .

\_\_\_\_\_  
No. 51.

Order for Interim Injunction (O. 47, r. 8).

[*Heading as in No. 1.*]

Upon hearing       for the plaintiff, and upon reading the affidavit of       , dated the       day of       , 19   , and the plaintiff by his said       undertaking to abide by any order the Court or a Judge may make as to damages in case the Court or a Judge should hereafter be of opinion that the defendant       shall have sustained any by reason of this order which the plaintiff ought to pay. It is ordered and directed that the defendant       , his agents and servants,       , and every of them, be restrained, and an injunction is hereby granted restraining them and every of them from       until after the trial of this action or until further order.

Dated the       day of       , 19   .

\_\_\_\_\_  
No. 52.

Order for Recovery of Vacant Premises (O. 8, r. 7).

[*Heading as in No. 1.*]

Upon reading the affidavit of       .

It is ordered that service of the writ of summons in this action under Order VIII., Rule 7. be good and sufficient service of the said writ for the recovery of possession of the land or property claimed in this action.

Dated the       day of       , 19   .

APP. K.  
Nos. 53, 54.

No. 53.

Order of Replevin (O. 49 r. 5).

In the Supreme Court of Judicature.

Between A. B., Plaintiff,  
and  
C. D., Defendant.

1. Upon the application of the above-named plaintiff, and upon reading the affidavit of \_\_\_\_\_, dated \_\_\_\_\_, and upon hearing \_\_\_\_\_, solicitor (or counsel) for \_\_\_\_\_.

2. It is ordered that the Sheriff of [*here insert the name of the county*], do without delay take the security required by Rule 6 of Order XLIX., [*and where Rule 7 applies add and Rule 7*] and cause to be replevied to the plaintiff, his goods, chattels and personal property following, that is to say: [*here set out description of property as in the affidavit filed*], which the said plaintiff alleges to be of the value of \$ \_\_\_\_\_, and to have been taken and unjustly detained [*or, unjustly detained, as the case may be*] by the defendant, C. D., in order that the said plaintiff may have his remedy in that behalf.

3. And it is further ordered that the said Sheriff do forthwith, after the execution of this order, make return what he shall have done in the premises, and do also return this order.

No. 54.

Replevin Bond (O. 49, r. 6 (1)).

Know all men by these presents, that we, A. B., (the plaintiff) of \_\_\_\_\_, W. G., of \_\_\_\_\_, and J. S. of \_\_\_\_\_, are jointly and severally held and firmly bound to \_\_\_\_\_, Sheriff of the county of \_\_\_\_\_, in the sum of \$ \_\_\_\_\_ of lawful money of Canada, to be paid to the said Sheriff, or his certain attorney, executors, administrators or assigns, for which payment to be well and truly made we bind ourselves, and each and every of us in the whole, our, and each and every of our heirs, executors and administrators, firmly by these presents, sealed with our seals.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, one thousand nine hundred and \_\_\_\_\_.

APP. K.  
No. 54.

The condition of this obligation is such, that if the above bounden A. B., do prosecute his action with effect and without delay against C. D., for the taking and unjustly detaining [or, unjustly detaining, *as the case may be*] of his cattle, goods and chattels, to wit: [*Here set forth the property distrained, taken or detained*], and do make a return of the said property if a return thereof shall be adjudged, and also do pay such damages as the defendant shall sustain by the issuing of the order of replevin if the said A. B. fails to recover judgment in his said action; and further do observe, keep and perform all rules and orders made by the Court in the said action, [*where Rule 7, of Order XLIX. applies, add and do indemnify and save harmless the defendant from all loss and damage which he may sustain by reason of the seizure of the said cattle, goods and chattels (as the case may be) and of any deterioration of the same in the meantime in the event of their being returned, and all costs and expenses which the defendant may incur, including reasonable costs not taxable between party and party*], then this obligation shall be void, or else remain in full force and virtue.

Sealed and delivered  
in the presence of

Form of Assignment.

Know all men by these presents, that I,  
Sheriff of the County of \_\_\_\_\_, have at the request of  
the within-named C. D., the defendant in this cause, assigned  
over and by these presents do assign this replevin bond unto  
the said C. D., pursuant to the Rules of the Supreme Court of  
Judicature in that behalf.

In witness whereof, I have hereunto set my hand and seal  
this \_\_\_\_\_ day of \_\_\_\_\_, one thousand nine hundred  
and \_\_\_\_\_.

Sealed and delivered  
in the presence of

APP. K.  
Nos. 55, 56.

No. 55.

Order for Examination of alleged Drunkard (O. 55, r. 1).

In the Supreme Court of Judicature.

In the matter of A. B., an alleged habitual drunkard.

Whereas a petition has this day been presented by a relative [*or as the case may be*] of the above named A. B., alleging that he is an habitual drunkard, squandering his property, and incapable of managing his affairs [*or as the case may be*], and praying that the matters of the said petition may be examined into; I do therefore hereby order the said A. B. to attend \* me at \_\_\_\_\_, on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_ next [*or instant*] at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, that the matters contained in the said petition may be enquired into, and such order made concerning the same as the evidence then given shall warrant.

Dated, &c.

N. B.—If the Judge shall order the evidence to be taken before a Referee, the above form may be altered as follows, commencing at the asterisk \* :—Before a Referee at such time and place as he may for that purpose appoint hereon, before whom the parties are to produce their witnesses, and the said Referee is to return the evidence taken by him duly certified, with this order, to me on or before the \_\_\_\_\_ day of \_\_\_\_\_ next, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon at \_\_\_\_\_, at which time and place I will hear the parties and make such order in the matter as the evidence shall warrant.

No. 56.

Order Appointing Committee of Estate of Drunkard (O. 55, r. 6).

In the Supreme Court of Judicature.

In the matter of A. B., an habitual drunkard.

Whereas, on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 19\_\_\_\_, a petition was presented on the part of \_\_\_\_\_, alleging that the above named A. B. was an habitual drunkard, and possessed or entitled to property, and praying that the said A. B. be declared

APP. K.  
No. 57.

an habitual drunkard; and whereas on the hearing of the said petition a declaratory order was made, and application has been made for the appointment of a committee to the said A. B.'s estate; it is therefore ordered that (*here describe names and additions of committee*), be the committee of the estate of the said A. B., such habitual drunkard as aforesaid, and that such committee before they in any way intermeddle with such estate give security by bond, in the penal sum of                      dollars, with                      sureties, and their sufficiency be approved of by a Referee, before whom such bond is to be given, who is to indorse hereon a certificate when such shall have been given.

Dated, &c.

*Certificate of Referee.*

I, (*name of Referee*), the Referee appointed under the above order, do hereby certify that the committee therein named have given the security thereby required, and that                      are the names and additions of the sureties, and that I have approved of such bond and sureties.

Dated, &c.

No. 57.

Bond of Committee of Drunkard's Estate (O. 55, r. 6).

Know all men by these presents, that we, A., B., C. (*here describe names and additions of committee and sureties*) are jointly and severally held and firmly bound unto C. D. (*here describe the name and addition of the habitual drunkard*), in the sum of                      , lawful money of Canada, to be paid to the said C. D., or his certain attorney, executors and administrators; for which payment well and truly to be made we do hereby bind ourselves, our and each of our heirs, executors and administrators, firmly by these presents.

Sealed with our seals.

Dated the                      day of                      , in the year of our Lord one thousand nine hundred and                      .

Whereas a petition was presented by                      to the Supreme Court of Judicature, alleging that the above-named C. D. was an habitual drunkard; and whereas on the matters of such



**APP. K.**  
**Nos. 57, 58.**

petition being heard a declaratory order was made under the provisions of the Rules of Court relating to habitual drunkards' estates ; and whereas the above bounden (*names of committee*) have by an order of the Court made in the said matter, been appointed the committee of the said C. D.'s estate, and the above bounden (*names of sureties*) have been accepted as sureties for the said committee and have agreed to become such sureties. Now, therefore, the condition of the above obligation is such, that if the said \_\_\_\_\_, committee as aforesaid, shall well and truly in all things discharge their duties as such committee, and well and truly obey and perform all orders and directions of the said Court, or any Judge thereof, made touching the said C. D., or the sale, management or care of his estate, then this obligation to be void, otherwise of full force and effect.

Sealed and delivered in  
presence of

*Certificate of Referee.*

I (*name of Referee*), the Referee appointed under the order appointing a committee, do hereby certify that I have approved, and do hereby in the terms of the said order approve, of the within bond and the sureties therein named and their sufficiency.

Dated, &c. \_\_\_\_\_

No. 58.

**Interlocutory Order Restraining Conveyances by Alleged Habitual Drunkard**  
(O. 55, r. 9).

In the Supreme Court of Judicature.

In the matter of A. B., an alleged habitual drunkard.

The same as Form 55 to the end, and then proceed as follows:

And I do hereby order and direct the said A. B., his attorneys and agents, and every of them, on pain of fine and imprisonment, until order be made to the contrary, not to make, execute, or deliver any conveyance or assignment of his

App. K.  
No. 59.

property, real or personal, or make any contract or engagement of or concerning the same, or any part thereof, in any way, or to intermeddle or deal with such property in any way or manner whatever; and I do hereby also order and direct all Registrars and Deputy Registrars of Deeds, on pain of fine and imprisonment, until order shall be made to the contrary, not to register or receive for registry in their several offices any conveyance or assignment executed by the said A. B. of any real or personal estate.

Dated, &c. \_\_\_\_\_

No. 59.

Order Restraining Conveyances by Alleged Habitual Drunkard  
(O. 55, r. 11).

In the Supreme Court of Judicature.

In the matter of A. B., \_\_\_\_\_, an alleged [*if made at the time of making the declaratory order or afterwards, omit the word "alleged"*] habitual drunkard.

Whereas a petition in this matter was presented on the day of \_\_\_\_\_, on behalf of \_\_\_\_\_, the petitioner; and whereas on application made to me this day on behalf of the said petitioner, it appears to my satisfaction that the said A. B. is likely to convey or assign his property [*or as the case may be.*] I do therefore order and direct the said A. B. &c., [*as in restraining clause of Form 58.*]

[N. B.—If the order be made at the same time as the declaratory order, the form may be altered as follows (*Entitled as above*):

Whereas after the hearing of the evidence given before me [*or returned to me*] on the allegations of the petition in this matter, I have made a declaratory order herein, and it therefore seems right that the said A. B. should be restrained from dealing or intermeddling with his estate, I do therefore hereby order and direct, &c. [*the same as before.*]

## APPENDIX L.

### ADMINISTRATION, RECEIVERS, ETC.

#### No. 1.

Summons by Referee (O. 58, r. 32).

In the Supreme Court of Judicature.

In the matter of the estate of A. B., deceased.

Or,

Between C. D., Petitioner,

and

E. F., Defendant.

The defendant E. F., [*or* G. H., of, &c.] is hereby summoned to attend at the Chambers of Mr. Justice , at [*or* at my Chambers at ] on the day of , at o'clock in the noon, to be examined [*or* to be examined as a witness] on the part of the , for the purpose of the proceedings directed by Mr. Justice , to be taken before me.

Dated the day of , 19 .

X. Y.,  
Referee.

This summons was taken out by of , solicitor for

#### No. 2.

Form of Advertisement for Claimants not being Creditors (O. 58, r. 16).

Pursuant to a judgment [*or* order] of the Supreme Court of Judicature made in [the matter of the estate of and in] an action by against , the person claiming to be next of kin to [*or* the heir of, *as the case may be*] , late of , in the county of , who died in or about the month of , are by their solicitors, on or before the day of , to come in and prove their claims at the Cham-

bers of Mr. Justice , at [or at my Chambers at ] App. L.  
Nos. 3, 4.  
or in default thereof they will be peremptorily excluded from  
the benefit of the said judgment [or order]. The day  
of , at o'clock in the noon, at the said  
Chambers is appointed for hearing and adjudicating upon the  
claims.

Dated the day of , 19

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### No. 3.

#### Form of Advertisement for Creditors (O. 58, r. 16).

Pursuant to a judgment [or an order] of the Supreme  
Court of Judicature made in [the matter of the estate of A.B.,  
and in] an action S. against P., the creditors of A. B., late of  
, in the county of , who died in or about the  
month of , 19 , are on or before the day of  
19 , to send by post, prepaid, to E. F., of , the solicitor  
of the defendant, C. D., the executor [or administrator] of the  
deceased [or as may be directed], their Christian and sur-  
names, addresses and descriptions, the full particulars of their  
claims, a statement of their accounts, and the nature of the  
securities (if any) held by them, or in default thereof, they  
will be peremptorily excluded from the benefit of the said  
judgment [or order]. Every creditor holding any security is  
to produce the same before Mr. Justice , [or before Mr.  
, Referee, as the case may be], at his Chambers at  
on the day of , 19 , at o'clock in the noon,  
being the time appointed for adjudication on the claims.

Dated this day of , 19

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### No. 4.

#### Notice to Creditor to Produce Documents (O. 58, r. 18).

[Title.]

You are hereby required to produce in support of the claim  
sent in by you against the estate of A. B., deceased [describe

**APP. L.**  
**Nos. 4, 5.**

*the document required to be produced*], before Mr. Justice  
[or before Mr. , Referee, *as the case may be*] at  
his Chambers at , on the day of , 19 , at  
o'clock in the noon.

Dated this day of 19 .

G. R., of, &c.,  
Solicitor for plaintiff  
[or defendant].

To Mr. S. T.

No. 5.

**Affidavit of Executor or Administrator as to Claims of Creditors**  
(O. 58, r. 20).

In the Supreme Court of Judicature.

[*Title.*]

We, C. D., of, &c. the above-named plaintiff [or defendant,  
*or as the case may be*], the executor [or administrator] of A.  
B., late of , in the county of , deceased, and E. F.,  
of, &c., solicitor, severally make oath and say as follows :

I, the said E. F., for myself, say as follows :—

1. I have in the paper writing now produced, and shown to  
me, and marked A., set forth a list of all the claims the parti-  
culars of which have been sent in to me by persons claiming  
to be creditors of the said A. B., deceased, pursuant to the  
advertisement issued in that behalf, dated the day of  
, 19 .

And I, the said C. D., for myself, say as follows :—

2. I have examined the particulars of the several claims  
mentioned in the paper writing now produced, and shown to  
me, and marked A., and I have compared the same with the  
books, accounts and documents of the said A. B., [*or as may  
be, and state any other inquiries or investigations made*], in  
order to ascertain, so far as I am able, to which of such claims  
the estate of the said A. B. is justly liable.

3. From such examination [*and state any other reasons*]  
I am of opinion and verily believe, that the estate of the said  
A. B. is justly liable to the amounts set forth in the sixth

column of the first part of the said paper writing, marked A., and to the best of my knowledge and belief, such several amounts are justly due from the estate of the said A. B., and proper to be allowed to the respective claimants named in the said schedule.

APP. L.  
Nov. 1, a.

4. I am of opinion that the estate of the said A. B. is not justly liable to the claims set forth in the second part of the said paper writing, marked A., and that the same ought not to be allowed without proof by the respective claimants [or, I am not able to state whether the estate of the said A. B. is justly liable to the claims set forth in the second part of the said paper writing, marked A., or whether such claims, or any parts thereof, are proper to be allowed without further evidence].

5. Except as hereinbefore mentioned, there are not, to the best of my knowledge, information, and belief, any other claims against the estate of the said A. B.

Sworn, &c.

No. 6.

Exhibit referred to in Affidavit (No. 5).

A.

[Title]

List of claims, the particulars of which have been sent in to E. F., the solicitor of the plaintiff [or defendant, or as may be], by persons claiming to be creditors of A. B., deceased, pursuant to the advertisement issued in that behalf, dated the day of , 19 .

This paper writing marked A. was produced and shown to , and is the same as is referred to in his affidavit sworn before me this day of , 19 .

**FIRST PART.—CLAIMS PROPER TO BE ALLOWED WITHOUT  
FURTHER EVIDENCE.**

Serial No.	Names of Claimants.	Addresses and Descriptions.	Particulars of Claim.	Amount Claimed.	Amt. Proper to be Allowed.

**App. L.**  
**Nos. 6, 7.**

**SECOND PART.—CLAIMS WHICH OUGHT TO BE PROVED BY THE CLAIMANTS.**

Serial No.	Names of Claimants.	Addresses and Descriptions.	Particulars of Claim.	Amount Claimed.

**No. 7.**

**Notice to Creditor of Allowance of Claim (O. 58, r. 24).**

*[Title.]*

The claim sent in by you against the estate of A. B., deceased, has been allowed at the sum of \$ , with interest thereon at per cent per annum, from the day of , 19 , and \$ for costs.

*[If part only allowed, add, If you claim to have a larger sum allowed, you are hereby required to prove such further claim, and you are to file such affidavit as you may be advised in support of your claim, and give notice thereof to me on or before the day of , 19 , next, and to attend by your solicitor at the Chambers of Mr. Justice [or at the Chambers of Mr. , Referee, as the case may be], at , on day of , 19 , at o'clock in the noon, being the time appointed for adjudicating on the claim.]*

Dated this day of , 19 .

G. R., of, &c., solicitor for the plaintiff *[or defendant]*.

To Mr. P. R.

## No. 8.

App. L.  
Nos. 8, 9.

Notice to Creditor to Prove his Claim (O. 58, r. 24).

[Title.]

You are hereby required to prove the claim sent in by you against the estate of A. B., deceased. You are to file such affidavit as you may be advised in support of your claim, and give notice thereof to me on or before the       day of       next and to attend by your solicitor at the Chambers of Mr. Justice       [or at the Chambers of Mr.       Referee; as the case may be], at       , on the       day of       , 19       , at       o'clock in the       noon, being the time appointed for adjudicating on the claim.

Dated this       day of       , 19       .

G. R., of, &amp;c., solicitor for the plaintiff [or defendant].

To Mr. S. T.

## No. 9.

Report of Referee (O. 58, r. 34).

[Title.]

[Proceed after introductory clause as follows:]

1. The defendants       , the executors of       , the testator, have received personal estate to the amount of \$       , and they have paid, or are entitled to be allowed on account thereof, sums to the amount of \$       , leaving a balance due from [or, to] them of \$       on that account.

The particulars of the above receipts and payments appear in the account marked       , verified by the affidavit of       , dated the       day of       , and which account is to be filed with this report, except that in addition to the sums appearing on such account to have been received, the said defendants are charged with the following sums [*state the same here or in a schedule*], and except that I have disallowed the items of disbursement in the said account numbered       , and

[Or in cases where a transcript has been made.]



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No. 9.

The defendants have brought in an account verified by the affidavit of , dated the day of , and which account is marked , and is to be filed with this report. The account has been altered, and the account marked , and which is also to be filed with this report, is a transcript of the account as altered and passed.

2. The debts of the testator which have been allowed, are set forth in the schedule hereto, and with the interest thereon, and costs mentioned in the schedule, are due to the persons therein named, and amount altogether to \$ .

3. The funeral expenses of the testator amount to the sum of \$ , which I have allowed the said executors in the said account of personal estate.

4. The legacies given by the testator are set forth in the schedule hereto, and with the interest therein mentioned remain due to the persons therein named, and amount altogether to \$ .

5. The outstanding personal estate of the testator consists of the particulars set forth in the schedule hereto.

6. The real estate to which the testator was entitled consists of the particulars set forth in the schedule hereto.

7. The defendants have received rents and profits of the testator's real estate, &c., [*in a form similar to that provided with respect to the personal estate.*]

8. The incumbrances affecting the said testator's real estate are specified in the schedule hereto.

9. The real estates of the testator directed to be sold, have been sold, and the purchase-mones amounting altogether to \$ have been paid into Court.

N. B.—The above numbers are to correspond with the numbers in the order after each statement; the evidence produced is to be stated as follows:—

The evidence produced on this account [*or, inquiry*] consists of the probate of the testator's will, the affidavit of A. B., dated , and paragraph numbered of the affidavit of C. D., dated

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App. L.  
No. 10.

## Affidavit Verifying Accounts and Answering Usual Inquiries as to Real and Personal Estate (O. 58, r. 35).

In the Supreme Court of Judicature.

[Title.]

We, A. B., of, &c., C. D., of, &c., and E. F., of, &c.,  
the above-named defendants, severally make oath and  
say as follows :

1. We have according to the best of our knowledge, information, and belief, set forth in Schedule I. hereto a full account and inventory of the personal estate of or to which G. H. , the testator in the judgment [or, order] dated made in this action [or, matter] named, who died on the day of , was possessed or entitled at the time of his death, *and not by him specifically bequeathed.*

2. Save what is set forth in the said Schedule I., *and what is by the said testator specifically bequeathed*, the said testator was not to the best of our knowledge, information, or belief, at the time of his death possessed of or entitled to any debt or sum of money due to him from us or any of us on any account whatsoever, nor to any leasehold or other personal estate whatsoever.

3. The said testator's funeral expenses have been paid. The same consist of the items of disbursements numbered and in the account hereinafter referred to [*or if not paid, it should be so stated with the amount due and to whom due*].

4. We have in the account marked A., now produced and shown to us, according to the best of our knowledge, information, and belief, set forth a full account of the personal estate of the said testator, *not by him specifically bequeathed*, which has come to our hands or to the hands of any of us, or to the hands of any person or persons by our order, or the order of any of us, or for our use or the use of any of us, with the times when, the names of the persons from whom, and on what account the same has been received, and also a like account of the disbursements, allowances, and payments made

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NO. 10.

by us or any of us on account of the said testator's funeral expenses, debts, and personal estate, together with the times when, the names of the persons to whom, and the purposes for which the same were disbursed, allowed, or paid.

5 And we, each speaking positively for himself, and to the best of his knowledge and belief as to other persons, further say that except as appears in the said account marked A., we have not, nor has any of us, nor have nor has any other person or persons by our order or the order of any of us, or for our use or the use of any of us, possessed, received, or got in any part of the said testator's personal estate, nor any money in respect thereof, and that the said account marked A. does not contain any item of disbursement, allowance, or payment, other than such as has actually been disbursed, paid, or allowed on the account aforesaid.

6. To the best of our knowledge, information, and belief, the personal estate of the said testator, now outstanding or undisposed of, consists of the particulars set forth in Schedule II. hereto.

7. Save what is set forth in the Schedule II., there is not to our knowledge, information, or belief, any part of the said testator's personal estate now outstanding or undisposed of.

8. We have, according to the best of our knowledge, information, and belief, set forth in Schedule III. hereto the particulars of all the real estate which the said G. H. was seized of or entitled to at the date of his death.

9. Save what is set forth in the said Schedule, the said testator was not, to the best of our knowledge, information, or belief, at the time of his death, seized of or entitled to any real estate whatsoever.

10. We have, according to the best of our knowledge, information, and belief, set forth in Schedule IV. hereto the particulars of all the incumbrances affecting the said testator's real estate, and what part thereof such incumbrances respectively affect.

11. We have in the account marked B. now produced and shown to us, according to the best of our knowledge, informa-

tion, and belief, set forth a full account of all the rents and profits of the said testator's real estate which has come to our hands or to the hands of any of us, or to the hands of any person or persons by our order, or the order of any of us, or for our use, or the use of any of us, and the times when, the names of the persons from whom, on what account, in respect of what part of such estate the same have been received, and the times when the same became due, and also a like account of the disbursements, allowances, and payments made by us, or any or either of us, in respect of the said testator's real estate, or the rents and profits thereof, and the times when, the names of the persons to whom, and the purposes for which the same were made.

12. And we, each speaking positively for himself, and to the best of his knowledge and belief as to other persons, further say that, except as appears in the said account marked B., we have not, nor has any of us, nor has any other person by our order, or the order of any of us, or for our use, or the use of any of us, possessed, received or got in any rents or profits of the said testator's real estate, nor any money in respect thereof, and that the said account marked B. does not contain any item of disbursement, payment, or allowance, other than such as has actually been disbursed, paid, or allowed as above stated.

The FIRST SCHEDULE above referred to.

1. \$250 cash in the house.
2. \$500 cash at the testator's bankers, Messrs. A. and B.
3. \$5,000 Dominion of Canada 3 per cent. bonds standing in the testator's name.
4. \$50 due from John James, for half year's rent of house at                   , to May 1, 19   .
5. \$32.00 balance remaining due from John Thomas on account of half year's rent of farm at                   , to November 1.
6. \$500, a debt due from Samuel Jones on a bond, with interest from                   , at                   per cent.
7. A leasehold house situate at                   , held under a lease for a term of                   , which will expire on                   , at a rent of

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\$250 a year, underlet to James Evans for a term which will expire on \_\_\_\_\_, at a rent of \$300 a year.

8. \$150, half a year's rent due from the said James Evans to \_\_\_\_\_.

The SECOND SCHEDULE above referred to.

*[The particulars to be set forth in the same manner as above.]*

The THIRD SCHEDULE above referred to.

*[To contain a short particular of the real estate.]*

The FOURTH SCHEDULE above referred to.

*[To contain a short particular of the incumbrances, and showing what part of the above real estate is subject to each.]*

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APP. I.  
No. 11.

Account of Personal Estate, being Account A, referred to in Form No. 10.  
(O. 58, r. 35).

A.

In the Supreme Court of Judicature.

[Title.]

This account marked A. was produced and shown to A. B. C. D., and E. F., and is the account referred to in their affidavit sworn this            day of

Before me [to be signed here by Commissioner or officer before whom the affidavit is sworn].

## RECEIPTS.

No. of Item.	Date when received.	Names of Persons from whom received.	On what account received.	Amount received.
1	19 .		Found in house.	\$
2		Evans and Co. .	Balance in Bankers'.	
3			Half-year's dividend on \$2,000 3 per cent. bonds due.	
4		John James . .	Bond debt of \$500 and interest from	
5		Samuel Jones .	to Bond debt of \$300 and interest from	
6		James Evans .	to Half-year's rent of leasehold house due	
7		Wm. Williams .	Produce of sale of the above leasehold house.	

## DISBURSEMENTS.

No. of Item.	Date when paid or allowed.	Names of Persons to whom paid or allowed	For what purpose paid or allowed.	Amount paid or allowed.
1	19 .	James Price .	Undertaker's bill for funeral.	\$
2		Messrs. A. & B.	Expenses of Probate.	
3		John George .	A debt due him for medical attendance.	
4		James Price .	Bond debt of \$1,000 and \$25 for interest thereon from to	

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No. 12.

No. 12.

Accounts of Rents and Profits, being Account B, referred to in Form No. 10.  
(O. 58, r. 35).

B.

In the Supreme Court of Judicature.

[Title.]

This account marked B. was produced and shown to A. B., C. D. and E. F., and is the account referred to in their affidavit sworn this       day of       .

Before me [*to be signed here by Commissioner or officer before whom affidavit sworn.*]

#### RECEIPTS.

No. of Item.	Date when received.	Names of Persons from whom received	On what Account and in respect of what Part of the Estate received and when due.	Amount received.
1	19 .	John James .	Half-year's rent for farm in parish of , due .	\$
2		Thomas James .	One quarter year's rent of house at , due .	
3		John James .	Same as No. 1, due	

#### DISBURSEMENTS.

No. of Item.	Date when paid or allowed.	Names of Persons to whom paid or allowed.	For what purpose paid or allowed.	Amount paid or allowed.
1	19 .	Sun Insurance Office . . . .	One year's insurance against fire, due .	\$
2		Thomas Carpenter . . . .	Repairs at John James' farm.	
3		James Francis .	City assessment, half-year due 10th Oct.	

No. 13.  
Receiver's Account (O. 47, r. 20)

[Title.]

(To Accord with the Order.) The [ ] account of A. B., the receiver appointed in this cause [or pursuant to an order made in this cause dated the day of ], to receive the rents and profits of the real estate, and to collect and get in the outstanding personal estate of C. D., the testator [or, intestate] in this cause named, from the day of , to the day of

REAL ESTATE — RECEIPTS.

No. of Item.	Date When Received.	Tenant's Name.	Description of Premises.	Annua Rent.	Arrears due at	Amount due at	Amount Received.	Arrears remaining due.	Observations.
1		John Jones	House Farm in the Parish of Norton in the County of Kings.	\$	\$	\$	\$	\$	
2		Thomas Jones.	House at Norton, aforesaid.						

PAYMENTS AND ALLOWANCES ON ACCOUNT OF REAL ESTATE.

No. of Item.	Date of payment or Allowance.	Names of Persons to whom paid or allowed.	For what Purpose paid or allowed.	Amount.
1		Sun Fire Office	One year's insurance of, due.	\$
2		Thomas Carpenter	Bill for repairs of house let to Thomas Jones	
3		James Francis	Allowance for a half-year's City Assessment Tax, due.	
			Total payments	

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No. 13.

RECEIPTS ON ACCOUNT OF PERSONAL ESTATE.      PAYMENTS AND ALLOWANCES ON ACCOUNT OF PERSONAL ESTATE.

No. of Item.	Date when received.	Names of Persons from whom received.	On what Account received.	Amount received.	No. of Item.	Date when paid or allowed.	Names of Persons to whom paid or allowed.	For what purpose paid or allowed.	Amount paid or allowed.

SUMMARY.

Amount of balance due from receiver on account of real estate on last account, .....	\$			\$
Amount of receipts on the above account of real estate, .....				
Balance of last account paid into Court, .....				
Amount of payments and allowances on the above account of real estate, .....				
Amount of receiver's costs of passing this account as to real estate, ....	\$			
Balance due from the receiver on account of real estate, ....				\$
Amount of balance due from receiver on last account of personal estate, .....				
Amount of receipts on the above account of personal estate, .....				
Balance of last account paid into Court, .....				
Amount of payments and allowances on the above account of personal estate, .....				
Amount of receiver's costs of passing this account as to personal estate, ....	\$			
Balance due from receiver on account of personal estate, .....				\$

## No. 14.

## List of Debts Allowed (O. 58, r. 35).

James v. Jones.

## LIST OF DEBTS.

No. of Entry of Claim.	Names of Creditors.	Addresses.	Amounts allowed for Principal, Interest, and Costs.	Total Amounts Due.
2	James Allen	St. John, Physician.	\$ 100.00	\$
		Interest . . . . .	4.00	
		Costs . . . . .	2.00	
1	Charles Cohen	98 Queen Street, Sussex, Gentleman, executor of John Thomas.	67.00	106.00
		Interest from 5th October, 1906, at 5 per cent.	4.00	
		Costs . . . . .	2.20	73.20
5	John Dennis and Owen Thomas.	Woodstock, Grocers and co-partners . . . . .	100.00	
		Interest from 16th October, 1906, at 5 per cent . . . . .	5.00	
		Another debt . . . . .	62.00	
		Interest . . . . .	2.10	
		Costs . . . . .	2.40	171.50

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Nos. 15, 16.

## No. 15.

## List of Legacies Remaining Unpaid (O. 58, r. 35).

James v. Jones.

## LIST OF LEGACIES.

Names of Legatees.	Descriptions.	Amounts of Principal and Interest.	Total Amounts Due.
James Oliver .	Son of testator, an infant Interest . . . . .	\$100 00 7 56	\$107 56
Mary Russell .	Of Moncton, widow . . . Interest from 1st Jan., 1895 the death of testator .	50 00 4 80	
Jane, the wife of John Williams	Of St. Andrews . . . . . Paid in part . . . . .	250 00 50 00	54 80
	Interest . . . . .	200 00 14 11	
		Total .	214 10

## No. 16.

## List of Annuities and Arrears Due (O. 58, r. 35).

## LIST OF ANNUITIES.

Names of Annuitants.	Description of Annuitants and Nature of Annuities.	Amounts of Annuities.	Amounts of Arrears due.
Mary Jones . .	Spinster, daughter of testator, during her life .	\$50 00	\$25 00
Maria Williams	Widow of testator, during her life and widowhood	200 00	
	Arrears due from 7th August, 1905, down to which it has been paid . .	.....	300 00
	Totals . . . . .	\$	\$

## No. 17.

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Nos. 17, 18.

List of Apportionments among Creditors or Legatees (O. 58, r. 35).

## APPORTIONMENT AMONG CREDITORS (OR LEGATEES).

Names of Creditors (or Legatees).	Addresses.	Amounts be- fore certified to be due and subsequent Interest.	Totals due	Amounts apport'd.
John Jones	St. John, Merchant.	\$200 00		
	Subsequent interest	17 00	\$217 00	57 00
Thomas Young and Robert Young.	St. Stephen, in the county of Charlotte, executors of Wil- liam Young, de- ceased.	\$200 00		
	Subsequent interest.	17 00	\$217 00	\$57 00
			Total	\$

## No. 18.

General Form of Recognizance (O. 71, r. 14).

In the Supreme Court of Judicature.

A. B., of \_\_\_\_\_, in the County of \_\_\_\_\_, before our Sovereign Lord, the King, in his Supreme Court of Judicature, personally appearing, doth acknowledge himself to owe to the Registrar and his successors the sum of \$ \_\_\_\_\_ lawful money of Canada, to be paid to the said Registrar or his successors, and unless he does so he grants for himself, his heirs, executors and administrators, that the said sum of \_\_\_\_\_ shall be levied, recovered and received of and from him and each of them, and from all and singular his goods, chattels, lands and tenements wheresoever the same may be found.

Witness our said Sovereign Lord Edward the Seventh, by the Grace of God of the United Kingdom of Great Britain and



*munager, as the case may be]* and hath approved of the above bounden and as sureties for the said , and hath also approved of the above-written recognizance with the underwritten condition as a proper security to be entered into by the said A. B., C. D., and E. F. pursuant to the said order and the rules of the Supreme Court of Judicature in that behalf, and as well in respect of the period for which the said has been appointed such receiver (*or receiver and munager*) as aforesaid, as also in respect of any extended or further period during which he may be continued or appointed such receiver (*or receiver and manager*), either under the said order or under any further order in the said action.

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No. 19.

Now the condition of the above-written recognizance is such that if the said do and shall duly account for all and every the sum and sums of money which he shall so receive on account of the [*follow words of order*] rents and profits of the real estate, and in respect of the personal estate of the said , and in respect of the said business, including as well all and every the sum and sums so received in respect of the period for which the said has been appointed such receiver (*or receiver and manager*) as aforesaid, as also all and every the sum and sums so received in respect of any appointment for any extended or further period during which he may be appointed such receiver (*or receiver and manager*) either under the said order, or under any further order in the said action at such periods as the said Judge shall appoint, and do and shall duly pay the balances which shall from time to time be certified to be due from him as the said Court or Judge hath directed or shall hereafter direct, then the above recognizance shall be void and of none effect, otherwise the same is to be and remain in full force and virtue.

Taken and acknowledged by the above-named  
at in the County of this day of  
19 .

Before me, a Commissioner for, &c.

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No. 19a.

No. 19a.

**Receiver's Bond (O. 47, r. 17).**

Know all men by these presents that I, \_\_\_\_\_ and we, \_\_\_\_\_ Company, Limited, whose office is situated at No. \_\_\_\_\_ (hereinafter called the Company), are jointly and severally held and firmly bound unto the Registrar of the Supreme Court of Judicature in the sum of \$ \_\_\_\_\_ of lawful money of Canada, to be paid unto the said Registrar or his successors, for which payment well and truly to be made I the said \_\_\_\_\_, for myself, my heirs, executors, and administrators, and every of them, and we, the Company, for ourselves and our successors, do bind and oblige ourselves for the whole firmly by these presents, sealed with the seal of the said \_\_\_\_\_, and also with the seal of the said Company, and signed by \_\_\_\_\_ thereof.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand nine hundred and \_\_\_\_\_.

Whereas by an order of the Supreme Court of Judicature, made in an action In the matter of the estate of \_\_\_\_\_, wherein \_\_\_\_\_ are plaintiffs and \_\_\_\_\_ are defendants, and dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, it was ordered that a proper person should be appointed to receive (or that upon the above bounden \_\_\_\_\_ first giving security he should be appointed receiver of) the rents and profits of the real estate, and to collect and get in the outstanding personal estate of \_\_\_\_\_ in the said order named [or of the business of \_\_\_\_\_, lately carried on between the plaintiff and defendant, &c., &c., and also to manage the said business, but by the said order the said \_\_\_\_\_ is not to act as manager beyond the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, without the leave of the Judge]. And whereas Mr. Justice \_\_\_\_\_ hath approved of the said \_\_\_\_\_ as a proper person to be such receiver [or receiver and manager], and hath approved of the Company as surety for the said \_\_\_\_\_ in the said sum of \$ \_\_\_\_\_, and has also approved of the above bond with the under-written conditions ]together with a recognizance entered into by the said \_\_\_\_\_ in the penal sum of \$ \_\_\_\_\_, and bearing date the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_], as a proper security to be entered into by the said \_\_\_\_\_ and the said Company pursuant to the said order, and the general orders of the Supreme Court

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of Judicature in that behalf, as well in respect of the period for which the said                      has been appointed such receiver [or receiver and manager] as aforesaid, as also in respect of any extended or further period during which such receiver [or receiver and manager] may be continued either under the said order or under any further order in the said action. Now the condition of the above written bond or obligation is such that if the above bounden                      , his executors or administrators, or some or one of them, do and shall duly account for all and every the sum and sums of money which the said                      shall so receive on account of the rents and profits of the real estate, and in respect of the personal estate of the said                      and in respect of the said business, including as well all and every the sum and sums so received in respect of the period for which the said                      has been appointed such receiver [or receiver and manager] as aforesaid, as also all and every the sum and sums so received in respect of any extended or further period during which the said                      may be continued or appointed as receiver [or receiver and manager] either under the said order or under any further order in the said action, at such period and in such manner as the Supreme Court of Judicature or the Judge thereof before whom the said action or the proceeding therein shall be taken or referred shall appoint, and do and shall pay the same as such Court or Judge hath directed or shall hereafter direct, then the above-written bond or obligation shall be void, otherwise the same shall, subject to the provisions hereinafter contained, be and remain in full force and virtue. Provided always, that if the said                      shall not for every successive term of twelve calendar months, to be computed from the                      day of                      , 19                      , within fifteen days after the                      day of                      , in each and every year pay or cause to be paid at the office of the company the annual premium or sum of \$                      , then the company shall at any time after such default in payment, be at liberty to apply by summons to the Judge at Chambers before whom the said action or the proceedings therein shall be taken or referred to be relieved from all further liability as such sureties as aforesaid, and such summons having been served upon such persons as the Judge shall direct, and being finally heard, all further liability of the said company as such sureties as aforesaid shall, from and



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after the final hearing of such summons, or from and after such other time as the Judge shall direct, cease and determine, save and except in respect of any loss or damage occasioned by any act or default of the said        in relation to his duties as such receiver [or such receiver and manager] as aforesaid, previously to such cesser and determination of liability. Provided always, that a certificate or certificates under the hand of the Registrar or a Referee, of the amount which the said        as such receiver [or receiver and manager] as aforesaid is liable to pay and has not paid shall be sufficient and conclusive evidence against the said        , his heirs, executors and administrators, and against the Company, and also as between the company and the said        and        of the truth of the contents of the said certificate or certificates, and that this bond has become forfeited thereby to the amount of the sum stated in such certificate or certificates, and shall form a valid and binding charge not only against the said        , his heirs, executors, and administrators, but also against the company and the funds and property thereof without its being necessary for the said        , and        , or either of them, their or either of their executors or administrators first to take legal or other proceedings against the said        , his heirs, executors, or administrators for the recovery thereof, and without any further or other proof being given either by or on the part of the said        and        or either of them, their or either of their executors or administrators in any action, suit, or proceeding to enforce this bond against the company or against the said        , his heirs, executors, or administrators, or by or on the part of the said company in any action or proceeding against the said        , his heirs, executors, or administrators, of the amount of such damage or loss, or that the same has been sustained, incurred, or occasioned by and through the act or default of the said        while in office. Provided always, and it is further agreed between the said        and the company that the said        shall and will, on being discharged from his office of or ceasing to act as such receiver [or receiver and manager] as aforesaid, forthwith to give notice thereof in writing, and also furnish to the company free of charge a certified copy of the order of the Court or Judge discharging him from his office as such receiver [or receiver and manager] as aforesaid. And further that he, the said        , his heirs, executors and administra-

tors, shall and will from time to time, and at all times, save, defend, and keep harmless the said company and their successors, and the property and funds of the said company from and against all loss and damage, costs and expenses which the said company, or the funds or property thereof shall or may or otherwise might at any time sustain or be put unto, for or by reason, or in consequence of the said company having entered into the above written bond for and at the request of the said

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In witness whereof the said                      has hereunto set his hand and seal, and the said company have hereunto caused their corporate seal to be affixed, and the said                      thereof has set his hand the day and year first above written.

—  
No. 20.

Affidavit verifying Receiver's Account (O. 47, r. 21).

In the Supreme Court of Judicature,

[Title.]

I,                      , of                      , the receiver appointed in this cause, make oath and say as follows:

1. The account marked with the letter A. produced and shown to me at the time of swearing this my affidavit, and purporting to be my account of *the rents and profits of the real estate and of the outstanding personal estate of*                      , the testator [or intestate] in this cause, from the                      day of                      , 19                      , to the                      day of                      , 19                      , both inclusive, contains a true account of all and every sum of money received by me or by any other person or persons by my order or, to my knowledge or belief, for my use on account, or in respect of the *said rents and profits accrued due on or before the said*                      day of                      *on an account or in respect of the said personal estate*, except what is included as received in my former account [or accounts] sworn by me.

2. The several sums of money mentioned in the said account, hereby verified to have been paid and allowed, have

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been actually and truly so paid and allowed for the several purposes in the said account mentioned.

3. The said account is just and true in all and every the items and particulars therein contained, according to the best of my knowledge and belief.

4. W. X. and Y. R. , the sureties named in the recognizance dated the                      of                      , 19     . are both alive, and neither of them has become bankrupt or insolvent.

---

No. 21.

Form of ordering Accounts and Inquiries (O. 33, r. 2).

This Court doth order that the following accounts and inquiry be taken and made ; that is to say,

1. An account of the personal estate not specifically bequeathed of A. B., deceased, the testator in the pleadings named, come to the hands of, &c.

2. An account of the testator's debts.

3. An account of the testator's funeral expenses.

4. An account of the testator's legacies and annuities (if any), given by the testator's will.

5. An inquiry what parts (if any) of the testator's said personal estate are outstanding or undisposed of.

And it is ordered that the testator's personal estate not specifically bequeathed be applied in payment of his debts and funeral expenses in a due course of administration, and then in payment of the legacies and annuities (if any) given by his will.

(If ordered.)

And it is ordered that the following further inquiries and accounts be made and taken ; that is to say,

6. An inquiry what real estate the testator was seized of or entitled to at the time of his death.

7. An account of the rents and profits of the testator's real estate received by, &c.

8. An inquiry what incumbrances (if any) affect the testator's real estate, or any and what parts thereof.

APP. L.  
NO. 21.

(If Sale ordered.)

9. An account of what is due to such of the incumbrancers as shall consent to the sale hereinafter directed in respect of their incumbrances.

10. An inquiry, what are the priorities of such last-mentioned incumbrances?

And it is ordered that the testator's real estate be sold with the approbation of the Judge, &c., &c.

And it is ordered that the further consideration of this cause be adjourned, and any of the parties are to be at liberty to apply as they may be advised.

## APPENDIX M. (O. 22, r. 11).

## PAYMENT INTO AND OUT OF COURT.

1. All moneys paid into Court under Order 22 of the Rules of Court, 1906, shall be paid or deposited by the Registrar or other proper officer receiving the same to the Receiver-General of the Province, who shall give a receipt therefor to the Registrar or officer making the payment or deposit.

## Request on Payment Into Court.

2. When money is paid into Court under the provisions of Order XXII., of the Rules of Court, 1906, (in any action brought to recover a debt or damages) a request shall be made to the Registrar in the Form A. hereunder, or as nearly as may be, and shall contain a statement of the circumstances under which the money is to be paid in in such of the following terms as may be applicable to the case, viz:—

- (A.) When the money is to be paid in subject to the provisions of Rule 5 of Order XXII., a statement in the following terms:—"Paid in on behalf of defendant in satisfaction of claim of above-named [*name of party*]," (or, "with defence setting up tender.")
- (B.) When the money is to be paid in subject to the provisions of Rule 6 of Order XXII., a statement in the following terms:—"Paid in on behalf of defendant against claim of above-named [*name of party*], with defence denying liability."
- (C.) When the money is to be paid in in pursuance of an order, or otherwise than as above specified, a statement of the nature and date of the authority under which the payment is made, as for instance:—"Paid in under order dated the                      day of  
19       ."

If the payment in is made upon a notice or pleading, such notice or pleading must be produced to the Registrar, and the receipt for the payment in shall be given thereon. .

FORM A.

APP. M.

I.—Request to Pay Money into Court.

SUPREME COURT OF JUDICATURE.

Title of cause or matter.

To the Registrar of the Supreme Court of Judicature.

Please receive \$                      for the account of the Receiver-General for and on behalf of the Supreme Court of Judicature which amount is paid in\*

Dated, &c.

(Signature)

*Name of Solicitor* }  
*on the other side.*

*Solicitor for the*

\* Insert one of the following statements, in accordance with the circumstances:—

(A.) “on behalf of defendant [*state name*] in satisfaction of claim of above-named” [*state name of party*] (or “with defence setting up tender”).

(B.) “on behalf of defendant [*state name*] against claim of above-named” [*state name of party*], “with defence denying liability.”

(C.) “if paid in in pursuance of an order, or otherwise than as above, state nature and date of authority. For instance:—“Under order dated                      day of  
19                      .”

[*Note.*—The request should show the name of the party in whose behalf the money is paid in].

3. In every case of a payment into Court under the provisions of the said Order XXII., as provided in the preceding regulation, the Registrar shall cause an entry to be made in his books indicating the circumstances under which the money is stated to be paid in.

Appropriation of Money paid in under Order XIV.

4. When a defendant has paid money into Court under Order XIV. of the Rules of Court, as a condition of liberty to defend, and desires to appropriate the whole or any part of

App. M.

such money to the whole or any specified portion of the plaintiff's claim pursuant to rule 10 of Order XXII. of the said Rules, he or his solicitor shall leave with the Registrar a notice of such appropriation in the Form B. hereunder, or as nearly as may be, specifying the title of the cause or matter, to the credit of which the money is standing, the date of the order under which the money was paid into court, and the amount to be appropriated; and whether so appropriated, (A) in satisfaction of a claim, or, (B) against a claim, with a defence denying liability; and thereupon, for the purposes of payment out of court, the money mentioned in the notice shall be subject to the next following regulation. The person leaving such notice must produce therewith the original receipt of the Registrar for the amount paid in.

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FORM B.

Notice of Appropriation of Money paid in under Order XIV.

SUPREME COURT OF JUDICATURE.

Title of cause or matter.

To the Registrar of the Supreme Court of Judicature.

Take notice that \$                      of the money paid into court in the above action under order dated                      , 19                      , is appropriated by the defendant [*state name of party*], in respect of the plaintiff's claim, as under, viz. :—\*

Dated, &c.

(*Signature*)

\* Insert one of the following statements, as may be intended :—

(A.) "in satisfaction of claim of plaintiff" [*state name of party*].

(B.) "against claim of plaintiff" [*state name of party*] "with a defence denying liability."

---

Payment out of Court of Money Paid in under Order XXII.

5. When money has been paid into Court under Order XXII., as described in Regulation 2 hereof, and when and so far as money paid in under Order XIV. has been appropri-

ated in the manner provided in the last preceding Regulation, App. M. payment of the money shall be made to the person in satisfaction of whose claim it has been paid in, or to the person otherwise entitled thereto, or, on the written authority of either such person respectively, to his solicitor, as under :— unless an order restraining such payment has been lodged with the Receiver-General prior to the issue of a direction or order by the Registrar for payment.

- (A.) When the money has been paid in or appropriated in satisfaction of a claim (or with defence setting up tender), under Regulation 2 (A.) hereof, or the last preceding regulation, a direction or order for payment (Form E.) shall be issued by the Registrar upon a request or authority in the Form C. hereunder, or as nearly as may be.
- (B.) When the money has been paid in or appropriated against a claim, with a defence denying liability, under Regulation 2 (B.) hereof, or the last preceding regulation, a direction for payment (Form E) shall be issued by the Registrar upon receipt of a notification that the plaintiff accepts the sum paid in in satisfaction, and that due notice has been given of such acceptance and upon a request or authority for payment of the same ; such notification and request or authority to be in the Form (D.) hereunder, or as nearly as may be.

When a request is made for payment of money paid into Court on a notice or pleading, the original receipted notice or pleading must, whenever so required, be produced to the Registrar.



APP. M.

## FORM C.

Request for Payment of Money Paid in or Appropriated in Satisfaction of Claim [under Rule 5 or Rule 10 of Order XXII.]

## SUPREME COURT OF JUDICATURE.

Title of cause or matter.

To the Registrar of the Supreme Court of Judicature.

I hereby request that payment of the sum of \$  
paid in in the above action may be made to\*

Dated, &c.

(Signature of witness)

(Signature)

(Address)

(Address)

(Occupation)

\* N. B.— If payment is to be made to the plaintiff's solicitor, the plaintiff must himself sign the request, and insert therein the words "*the solicitor to me, the plaintiff*" (naming such solicitor); but if payment is to be made to the plaintiff in person, the request may be signed either by the plaintiff, who should insert "*me, the plaintiff*," or by the solicitor of the plaintiff, who must insert "*the plaintiff*," (naming him).

## FORM D.

Request for Payment of Money paid in or appropriated against Claim, with Defence denying Liability [under Rule 6 or Rule 10 of Order XXII]

Supreme Court of Judicature.

Title of cause or matter.

To the Registrar of the Supreme Court of Judicature.

I hereby notify that the sum of \$  
paid in in the  
above action has been accepted by the plaintiff in satisfaction  
of the claim in respect of which it is paid in, and I declare  
that due notice has been given of such acceptance thereof.  
And I request that payment of the said sum may be made to\*

(Signature of Witness)

(Signature)

(Address)

(Address)

(Occupation)

\* N. B.— If payment is to be made to the plaintiff's solicitor, the plaintiff must himself sign the request, and insert therein the words "*the solicitor to me, the plaintiff*" (naming such solicitor); but if payment is to be made to the plaintiff in person, the request may be signed either by the plaintiff, who should insert "*me, the plaintiff*," or by the solicitor of the plaintiff, who must insert "*the plaintiff*" (naming him).

# PAYMENT INTO AND OUT OF COURT.

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## FORM E.

App. B.

### Direction or Order for Payment out of Court.

Supreme Court of Judicature.

Title of Cause }  
or Matter. } v.

Date , 19 .

The Receiver-General is hereby directed to make the payments specified below out of the money standing in his books to the credit of the above cause or matter.

Name of person to whom, and also of the person (if any) upon whose authority, payment is to be made.		Particulars (when paid in, etc.)	Amount to be paid
Person to be paid (Christian name to precede surname).	Person (if any) to give authority for payment.		
			\$

Total amount in words .

(Signature)

Seal of Court.

Registrar of the Supreme Court of Judicature.

## APPENDIX B. (O. 70, r. 27 (33) ).

### TABLE OF COSTS.

#### SOLICITOR.

##### *Instructions.*

1.	Instructions to sue in undefended cases, . . . . .	\$3 00
2.	In defended cases, . . . . .	5 00
3.	Instructions to defend, . . . . .	5 00
4.	Instructions for petition when no writ of summons is issued, . . . . .	3 00
5.	Instructions on issue of originating summons, . . . . .	3 00
6.	On appeal, . . . . .	3 00
7.	On pleading, . . . . .	3 00
8.	On counterclaim, . . . . .	2 00
9.	On reply to counterclaim, . . . . .	2 00
10.	To amend any pleading when costs are allowed, . . . . .	2 00
11.	For special case where no retainer is allowed, . . . . .	3 00
12.	To add parties by order of the Court or Judge, . . . . .	3 00
13.	For adding parties in consequence of marriage, death, assignment, &c., . . . . .	2 00
14.	On payment into Court, on offer to suffer judgment by default, on tender of damages, on acceptance of same, or on confession of defence, . . . . .	2 00
15.	On drawing affidavit in answer to interrogatories or other special affidavits and attending, . . . . .	3 00
16.	For issue of fact, by consent and Judge's order, . . . . .	2 00
17.	For such other important step or proceeding in the suit as the taxing officer is satisfied warrants such a charge, . . . . .	2 00

##### *Writs.*

1.	Writ of summons or writ of capias for the commencement of any action, . . . . .	2 00
2.	Concurrent writ of summons or writ of capias, . . . . .	1 00
3.	Renewal of writ (except writ of execution), . . . . .	1 00
4.	Subpœnas <i>ad testificandum</i> and <i>duces tecum</i> , . . . . .	1 00

5. Notice of writ for service in lieu of writ out of the jurisdiction and copy, . . . . .	\$1 00
6. (Alias and subsequent writs to be allowed as originals).	
7. Endorsement of claim, if special, . . . . .	1 00
8. Endorsement of writ of summons, when no further statement of claim, . . . . .	2 00
9. Issuing any writ of execution, or other writ to enforce any judgment or order, . . . . .	5 00
10. Renewal of any writ of execution, . . . . .	2 00
(In both cases to include placing of the same in the Sheriff's hands, and all attendances, indorsements, copies and letters in connection therewith).	
11. Writ of inquiry, . . . . .	4 00
12. Originating summons of five folios or under, . . . . .	1 50
Each additional folio, . . . . .	0 20
13. All writs if over four folios, for each additional folio, . . . . .	0 20

*Copy and Service of Writs, &c.*

1. Copies of all writs, including copy of notices indorsed, each, . . . . .	1 00
2. Copy of subpoena, . . . . .	0 50
3. Service of each copy of writ, . . . . .	0 50
4. Service out of the jurisdiction, correspondent's charges and actual expenses of service, in the discretion of the taxing officer.	

*Drawing Pleadings, &c.*

1. Drawing statement of claim, defence or counterclaim, . .	2 00
2. If above ten folios, for every folio above ten, in addition,	0 20
3. Reply, with or without joinder of issue, confession of defence, joinder of issue without other matter, and any other pleading (not being a petition or summons) and amendments of any pleading, . . . . .	1 00
4. If above three folios, for each additional folio, . . . . .	0 20
5. Particulars, breaches, and objections, when required, . . . . .	0 60
If above three folios, each additional folio, . . . . .	0 20
6. Petition, per folio, . . . . .	0 20
7. Issue for trial of facts, per folio, . . . . .	0 20
8. Special case of five folios or less, . . . . .	1 50
9. For each additional folio, . . . . .	0 20
10. Interrogatories, per folio, . . . . .	0 20
11. Adding parties by order of Court or Judge, . . . . .	1 00

12.	Notice of appeal, five folios or under, . . . . .	\$2 00
	The above charges to include engrossing, but not copies to serve or file, or actual expenses of printing.	
13.	For each folio above five, . . . . .	0 20
14.	Taking cognovit and entering judgment thereon, or on bond and warrant when there has been no previous proceeding and the true debt does not exceed \$500, exclusive of stamps, . . . . .	10 00
15.	For same service when the true debt exceeds \$500, . . . .	15 00
16.	Drawing and engrossing cognovit or bond and warrant, and attending execution where there have been previ- ous proceedings, . . . . .	2 00
17.	Particulars of claim, set-off or counterclaim of five folios or under, including engrossing, . . . . .	2 00
18.	Each additional folio, . . . . .	0 20
19.	Summons to attend Judge, . . . . .	0 60
	Copy for service, . . . . .	0 20
20.	Preparing bond to secure costs or any recognizance (to include engrossing affidavits and attendance in con- nection therewith), . . . . .	5 00
21.	Preparing and engrossing advertisements for claimants or creditors, including attendance for approval and sig- nature, and to print, . . . . .	2 00
22.	Abbreviating any pleading, petition, affidavit or other proceeding (not including evidence taken <i>viva voce</i> or under order or commission) necessary for the use of counsel, including engrossing, per folio, . . . . .	0 10
23.	Copy for counsel, per folio, . . . . .	0 05
24.	Affidavits, per folio, . . . . .	0 20
25.	Copies of pleadings, affidavits, and other documents, when necessary and taxable, and no other provision is made, per folio, . . . . .	0 10
	Copy of pleadings for use of Judge, per folio, . . . .	0 10
26.	Bill of costs for taxation, per folio, . . . . .	0 20
	Each copy, per folio, . . . . .	0 10
27.	Accounts and statements, when necessary and taxable, and copies, each, per folio, . . . . .	0 10
28.	For engrossing for printer copy of case on appeal ordered to be printed, when such engrossed copy is necessary and properly required, per folio, . . . . .	0 05
29.	For correcting and superintending printing, per folio, . . . .	0 05

30. For printing, the amount actually and properly paid to the printer.

These allowances are to include all attendances on the printer.

31. Where costs of printing special case on appeal are ordered, the above allowances are to be made.

#### *Appearances.*

- |   |        |
|---|--------|
| 1. Appearance, including engrossing and attendance to enter,  | \$1 00 |
| 2. For each additional defendant, . . . . .   | 0 20   |
| 3. If a person appearing to a writ of summons to recover land limits his defence by his memorandum of appearance, in addition to the above, . . . . . | 1 00   |

#### *Notices.*

- |  |      |
|--|------|
| 1. All notices and demands of three folios or under (to include one copy), . . . . . | 0 60 |
| 2. For each additional folio, . . . . .  | 0 20 |
| 3. Additional copy, for each folio, . . . . .  | 0 10 |

#### *Perusals.*

- |  |      |
|--|------|
| 1. Of each pleading of opponent, . . . . .   | 1 00 |
| 2. Of amendment of any such pleading, . . . . .  | 0 60 |
| 3. Of special case by the solicitor of any party except the one by whom prepared, . . . . .  | 2 00 |
| 4. Of petitions, affidavits, affidavit in answer to interrogatories, exhibits, and other proceedings in special or contested actions or matters, or of interrogatories and cross-interrogatories of a party adverse in interest where perusal is necessary, if 20 folios or under, . . . . . | 1 00 |
| 5. For each folio over 20, . . . . .<br>(Not in any case to exceed \$5.00).  | 0 05 |
| 6. Of notice to produce on trial or hearing of action, and notice to admit by solicitor of the party served, . . . . .   | 0 40 |

#### *Attendances.*

- |   |      |
|---|------|
| 1. Attending on return of summons or motion in Chambers,        | 1 00 |
| 2. In Court, on motion or petition of course and for order, . . | 1 00 |
| 3. In Court, on special motion, . . . . .                       | 2 00 |
| on special case or special petition, . . . . .                  | 2 00 |
| 4. May be increased in the discretion of the taxing officer to  | 2 00 |

5.	On necessary consultation with counsel in special and important matters, . . . . .	\$2 00
6.	May be increased in the discretion of the taxing officer as between solicitor and client to such sum as he shall see fit, not exceeding . . . . .	10 00
7.	On hearing or trial of cause when solicitor not himself counsel or partner of counsel, per hour necessarily present, . . . . .	1 00
8.	May be increased in special, difficult and important cases at discretion of the taxing officer for each hour, to . .	2 00
9.	In no case to exceed for each day engaged, . . . . .	10 00
10.	To hear judgment when judgment reserved at Court, . . . .	2 00
11.	To hear judgment by Judge at Chambers, . . . . .	1 00
12.	On taxation of costs, such fee as the taxing officer may allow, not to exceed . . . . .	5 00
(Except as provided in O. 2, r. 6, and O. 70, r. 27 (26), if more than one-fifth of the bill is taxed off, costs of taxation shall be allowed the opposing party and deducted from the bill presented for taxation).		
13.	To obtain and give undertaking to appear when service accepted by solicitor, . . . . .	1 00
14.	Attendance on warrant, summons, or appointment of registrar, referee, commissioner, examiner, or other person, per hour, . . . . .	1 00
15.	May be increased by the taxing officer to an amount not exceeding, per hour, . . . . .	2 00
16.	In no case to exceed for each day engaged, . . . . .	10 00
17.	To file or serve, . . . . .	0 50
18.	To enter or set down action, special case, or appeal, for hearing or trial, . . . . .	1 00
19.	To inspect, or produce for inspection, documents pursuant to notice to admit, . . . . .	1 00
	Or per hour, . . . . .	1 00
20.	To inspect, or produce for inspection, documents referred to in any pleading, notice in lieu of pleading or affidavit, pursuant to notice under O. 31, r. 13, . . . .	1 00
	Or per hour, . . . . .	1 00
21.	Attending to sign final or interlocutory judgment, . . . .	1 00
22.	Attending District Clerk for order or certificate of verdict or judgment, or order for replevin, . . . . .	0 50
23.	Attending to pay money into Court or receive money out, . .	2 00
24.	Every necessary attendance on a Judge not provided for, . .	0 50

# TABLE OF COSTS.

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25.	On Registrar, Referee, or other officer, . . . . .	\$0 20
26.	Attending sale under a judgment or order of the Court, . . . . .	5 00
27.	Attending Registrar on settlement of minutes of judgment or order, per hour, . . . . .	2 00

## *Briefs.*

1.	For brief, for use in Court, five folios or under, . . . . .	5 00
2.	Each additional folio, . . . . .	0 20
3.	For brief on hearing of an originating summons, . . . . .	4 00

## *Miscellaneous.*

1.	Search at Registry Office at commencement of an action or proceeding when necessary in the opinion of the taxing officer, . . . . .	5 00
2.	Expenses of postage, telegrams and telephone messages, when necessary in the discretion of the taxing officer. . . . .	
3.	Agent's fee where there is no appearance, . . . . .	1 00
4.	In all other cases, . . . . .	2 00
5.	Cost of necessary plans or tracings used on a trial or argument. . . . .	
6.	For every oath, declaration, or affirmation, including attendance, . . . . .	0 40
7.	Letter to each defendant before action, . . . . .	0 50

## *Counsel Fees.*

1.	On motions of course or on motions in matters not special, . . . . .	2 00
2.	On special <i>ex parte</i> motion or application to the Court, . . . . .	5 00
3.	On argument in supporting or opposing any appeal or application to the Court in a contested case or special case, . . . . .	10 00
4.	May be increased in the discretion of the presiding Judge for an amount each day engaged, not exceeding . . . . .	50 00
5.	On trial or argument before a Judge, fee in the discretion of the Judge for each day engaged, not exceeding . . . . .	50 00
6.	On consultations, . . . . .	2 00
7.	May be increased by the taxing officer to . . . . .	5 00
8.	On argument or examination in Chambers, in cases proper for the attendance of counsel and where counsel attends, . . . . .	2 00



- |     |   |        |
|-----|---|--------|
| 9.  | May be increased in the discretion of the taxing officer to a sum not exceeding . . . . .   | \$5 00 |
| 10. | And subject to a further increase in special and important matters in the discretion of the Judge.  |        |
| 11. | On settling pleadings, special affidavits, interrogatories, special case, issues or petitions, in the discretion of the taxing officer, not exceeding . . . . .   | 5 00   |
| 12. | On arbitrations, counsel fees may be allowed and taxed on the same scale and conditions, so far as possible, as those prescribed for counsel fees at trials.  |        |
| 13. | For any service of solicitor or counsel not provided for by this tariff, the same fee shall be allowed as is prescribed by Chapter 188 of the Consolidated Statutes, 1903, for solicitor and counsel for like services. |        |
| 14. | In taxing costs between solicitor and client, the taxing officer may allow for services rendered, not provided for by this tariff, a reasonable compensation as far as practicable analogous to its provisions.         |        |

*Registrar.*

- |     |  |      |
|-----|--|------|
| 1.  | Sealing every writ of summons, writ of capias, or concurrent writ of summons or writ of capias, originating summons, or any writ of execution, supersedeas or subpoena, or other writ or process not being a Crown writ, . . . . . | 0 30 |
| 2.  | Entering exoneretur, . . . . .   | 0 50 |
| 3.  | Filing and entering every appearance, . . . . .  | 0 50 |
| 4.  | Filing and entering interlocutory judgment, . . . . .  | 0 50 |
| 5.  | Certificate of same, . . . . .   | 0 50 |
| 6.  | Certificate of filing of affidavit of service, state of cause, etc., . . . . .   | 0 50 |
| 7.  | Filing and entering any amendment or suggestion of three folios or under, . . . . .  | 1 00 |
| 8.  | For each additional folio, . . . . .   | 0 20 |
| 9.  | Filing and entering discontinuance, . . . . .  | 0 50 |
| 10. | Entering every cause, including the filing of all papers, . . . . .  | 3 00 |
| 11. | On notice and entry of bail, . . . . .   | 0 50 |
| 12. | On every affidavit used or filed, . . . . .  | 0 20 |
| 13. | On every pleading or petition, . . . . .   | 0 20 |
| 14. | On every summons or order signed by a Judge, . . . . .   | 0 20 |

TABLE OF COSTS.

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15.	Rules or orders by the Court signed by the Registrar, of two folios or under, . . . . .	\$0 50
16.	For each additional folio, . . . . .	0 20
17.	Certificate of any document under the seal of the Court of three folios or under, . . . . .	0 50
18.	For each additional folio, . . . . .	0 20
19.	Copies of all papers not specially provided for, per folio, . . . . .	0 10
20.	On every notice or demand filed, . . . . .	0 20
21.	Commissions issued under an order of the Court or Judge, . . . . .	3 00
22.	On record for trial or assessment, on entry, . . . . .	1 50
23.	On taxing bill of costs, \$1.00 on every \$100.00 or fraction of \$100.00 of the bill presented for taxation. . . . .	
24.	On judgment by default, including all papers filed, . . . . .	2 00
25.	On judgment in defended cases, . . . . .	3 00
26.	On memorial of judgment, . . . . .	0 50
27.	Drawing minutes of judgments, decrees, or orders, of six folios or under, . . . . .	4 00
28.	Each additional folio, . . . . .	0 20
29.	Each copy, per folio, . . . . .	0 20
30.	Certificate or report not under seal, of five folios or less, . . . . .	0 50
31.	For each additional folio, . . . . .	0 20
32.	Filing and entering order <i>nisi</i> or absolute, . . . . .	1 00
33.	Drawing and entering commitment, . . . . .	2 00
34.	Copy, per folio, . . . . .	0 20
35.	Perusing, signing and sealing writs requiring fiat of Court or Judge, . . . . .	1 00
36.	Each search, . . . . .	0 20
37.	Entering satisfaction on Record, and filing satisfaction piece, including any necessary search, . . . . .	0 50
38.	Upon request to pay money into Court, . . . . .	0 20
39.	Notice of appropriation of money paid in under O. 14, . . . . .	0 20
40.	Upon request for payment of money paid in or appropriated in satisfaction of claim, or against claim, . . . . .	0 20
41.	Upon order for payment out of Court, . . . . .	1 00

Stamps shall be placed on the documents filed or used on which the fee is payable when practicable; when not practicable, then upon a præcipe or memorandum to be deposited with the Registrar.

*Referee, Examiner, &c.*

1.	Entering reference under O. 33, r. 24, . . . . .	1 00
2.	Summons or notice, . . . . .	0 40

## TABLE OF COSTS.

3.	Report or certificate on hearing, including engrossing, of ten folios or under, . . . . .	\$4 00
4.	If above ten folios, for each additional folio, including engrossing, . . . . .	0 30
5.	Certificate on motion or petition, including engrossing, of three folios or under, . . . . .	1 00
6.	Each additional folio, including engrossing, . . . . .	0 30
7.	Drawing and executing conveyance of land, including engrossing, of ten folios or under, . . . . .	5 00
8.	For each additional folio, including engrossing, . . . . .	0 30
9.	Advertisement for sale, of ten folios or less, . . . . .	1 50
10.	Each additional folio, . . . . .	0 10
11.	Attending sale under his direction, . . . . .	5 00
12.	Examining and settling conveyance to be executed by another, . . . . .	2 50
13.	Short attendance on summons or appointment, . . . . .	1 00
14.	Attendance over one and not exceeding two hours, . . . . .	2 00
15.	Attendance over two and not exceeding four hours, . . . . .	4 00
16.	Appointment for examination or adjournment, . . . . .	0 30
17.	Swearing every witness, . . . . .	0 20
18.	Taking interrogatories or depositions, per folio, . . . . .	0 20
19.	Every exhibit other than a receipt or voucher for the payment of money, marked and put in evidence, . . . . .	0 30
20.	Administering an oath or taking an affirmation including attendance, . . . . .	0 40
21.	On assessment of damages, such fee as shall be allowed by the Judge or taxing officer, . . . . .	
22.	Copies of necessary papers not provided for, per folio, . . . . .	0 10
23.	To each commissioner, in lunacy, dower or partition, for each day actually engaged, not exceeding, . . . . .	10 00
24.	For travel, a referee shall be allowed reasonable disbursements, and mileage going and returning at per mile, . . . . .	0 05

*District Clerk.*

1.	Entering each cause for trial, . . . . .	0 50
2.	Filing each issue or record, . . . . .	0 50
3.	Reading and filing every affidavit, . . . . .	0 20
4.	On entering findings of fact and directions of Judge at trial pursuant to Order XXXV., rules 23 and 24, and certifying same, . . . . .	2 00
5.	Entering each default, . . . . .	0 30
6.	Swearing and empanelling a jury, . . . . .	0 50

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7.	Swearing a witness or constable, . . . . .	\$0 20
8.	Drawing and engrossing order, per folio, . . . . .	0 30
9.	Each paper in evidence, . . . . .	0 10
10.	Taking verdict, . . . . .	0 30
11.	Every judgment pronounced, jury discharged, record with- drawn or order of reference at trial, . . . . .	0 50
12.	Order for replevin, where granted <i>ex parte</i> , . . . . .	1 00
	Where granted on notice, including notice, . . . . .	3 00

## *Sheriff—Service of Process, &c.*

1.	Serving every writ, order, rule, notice, or other paper, except final process, . . . . .	0 50
2.	Affidavit of service and swearing, . . . . .	0 40
3.	Service of final process, . . . . .	1 00
4.	Service of writ of attachment, <i>ne exeat</i> or <i>scire facius</i> , . . .	1 00
5.	On habeas corpus, . . . . .	2 00
6.	Actual and necessary mileage from the Court House to the place where service of any process, paper or pro- ceeding is made, per mile, going and returning, . . . .	0 07½

## *Arrest, &c.*

1.	Arrest when amount does not exceed \$200, . . . . .	2 00
2.	Arrest when amount does not exceed \$600, . . . . .	4 00
3.	Arrest when amount over \$1,000, . . . . .	6 00
4.	Bail bond, or bond to the limits, . . . . .	2 00
5.	Assignment of the same, . . . . .	0 50
6.	Mileage going to arrest, when made, per mile, . . . . .	0 05
7.	Mileage conveying party arrested from place of arrest to gaol, per mile, . . . . .	0 05
8.	Bringing up prisoner on attachment or <i>habeas corpus</i> , per mile, . . . . .	0 10

## *Returns, &c.*

1.	Return of all processes and writs, except subpoenas, . . . .	0 30
2.	Return of rules, notices, or other papers, . . . . .	0 20
3.	Drawing every affidavit when necessary and prepared by the Sheriff, including swearing, . . . . .	0 40
4.	Receiving, filing, entering and indorsing all writs, rules, notices, and other papers, each, . . . . .	0 20

*Replevin.*

1. Warrant to Bailiff, . . . . .	\$0 40
2. Notice for service on defendant, . . . . .	0 40
3. Delivering of goods to party obtaining order of replevin, . . . . .	2 00
4. On replevin bond, . . . . .	2 00
5. Assignment, . . . . .	0 50
6. All necessary disbursements for the possession, care and removal of property taken in replevin.	

*Sales, Poundage, &c.*

1. Poundage on executions and on attachments in the nature of executions, where the sum made does not exceed \$160, per \$1.00, . . . . .	0 05
2. Where the sum is over \$160 and does not exceed \$400, per each \$4.00, . . . . .	0 10
3. Where the sum is over \$400, per each \$4.00, . . . . . (If compromised after levy or arrest, the same rate to the value of the compromise). (Exclusive of mileage for going to seize and sell, and of all disbursements necessarily incurred in the care and removal of the property).	0 07
4. Schedule taken on execution, attachment or other process, including copy to defendant, not exceeding five folios, . . . . .	0 60
5. Each folio above five, . . . . .	0 07
6. Drawing advertisements when required by law to be published or posted, . . . . .	1 00
7. Every notice of postponement of sale, . . . . .	0 20
8. The sum actually disbursed for publishing or posting.	
9. Preparing and executing conveyance of real property sold under execution, . . . . .	3 00
10. On reference to assess damages under Order XXXV., r. 27, such fee as shall be allowed by the Judge or taxing officer.	

*Sequestration.*

1. Upon seizure of estate and effects under writ of, . . . . .	2 00
2. Schedule (including copy for defendant), of five folios or less, . . . . .	0 80
3. Each folio above five, . . . . .	0 07
4. Removing or retaining property reasonable and necessary disbursements and allowances to be made by taxing officer or by order of a Judge.	
5. Poundage followed by sale and collection, as on other executions.	

*Writ of Possession.*

Executing writ of possession and executing writ of restitution, besides mileage, . . . . .	\$4 00
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*On a View by Jury.*

1. Attending, . . . . .	2 00
2. Travelling expenses actually paid.	

*Writ of Inquiry, &c.*

1. Presiding or attendance on execution of writ of inquiry or other writ of like nature, each day, . . . . .	3 00
2. Summoning jury, . . . . .	2 00

The same fees shall be taxed and allowed to Coroners for services rendered by them as allowed to Sheriffs for the same services above specified.

*Crier.*

1. Calling jury, . . . . .	0 20
2. Every verdict or judgment, . . . . .	0 20
3. On swearing each witness, . . . . .	0 05
4. Calling a defendant on recognizance, . . . . .	0 20
5. Discharging a person by proclamation, . . . . .	0 20

*Constable.*

1. On each trial. . . . .	0 50
2. Attending the jury in each cause, . . . . .	0 20
3. Serving a warrant, . . . . .	0 20
4. Summoning a jury on inquest, . . . . .	0 40
5. Attendance thereon, . . . . .	0 40
6. Travelling, per mile, . . . . .	0 05

*Juror.*

1. Attendance, per day, . . . . .	1 00
2. Travelling, 5 cents per mile going and returning.	

*Allowance to Witnesses.*

1. For attendance, per day, . . . . .	1 00
2. Physicians and surgeons, barristers and solicitors, engineers, actuaries, accountants, or other skilled persons other than parties to the cause, when called upon to give evidence of any professional service rendered by them, or to give professional opinions, per diem, . . . . .	5 00

3. If witnesses attend in one case only, they will be entitled to the full allowance. If they attend in more than one case, they will be entitled to a proportionate part in each case only.
4. Travelling expenses of witnesses shall be allowed according to the sums reasonably and actually paid, but in no case shall exceed five cents per mile, each way.

*Fees to Registrar in Certain Matters.*

Fees payable to the Registrar for duties performed by virtue of an Act of the Federal Parliament, or of any other Province, or under the law of any other jurisdiction.

*Controverted Elections.*

1. On filing and entering petition, . . . . .	\$0 60
2. On receipt or on payment of deposit, 2 per cent.	
3. Comparing and forwarding copy of petition to returning officer, per folio, . . . . .	0 05
4. Entering appointment and address of agent, ...	0 60
5. Each notice, letter or certificate, . . . . .	0 60
6. Signing and sealing every process, . . . . .	0 50
7. Drawing orders, etc., of five folios or less, . . . . .	1 00
8. Certified copies of all papers, including sealing, per folio,	0 20
9. Copies of all papers, per folio, . . . . .	0 10
10. Entering and filing each paper, . . . . .	0 20
11. Each search, . . . . .	0 20
12. Taxing costs, \$1.00 per each \$100 or part of \$100 of the bill presented.	
13. Entering order of dismissal, . . . . .	1 00

*Appeal to Supreme Court of Canada.*

1. Copies of pleadings and papers for printer, per folio, . . . .	0 10
2. Reading and certifying case, per folio, not exceeding 500,	0 05
3. For each folio in excess of 500, . . . . .	0 02
4. Actual disbursements for copies of plans, &c.,	

For services not otherwise provided for, the same fees as may be for like services under the principal Act.

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